

No. 14913

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**United States  
Court of Appeals**  
for the Ninth Circuit

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KEENAN PIPE & SUPPLY COMPANY, a Corporation,

Appellant,

vs.

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,

Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court for the  
Southern District of California,  
Northern Division.**

**FILED**

**FEB -8 1956**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Appellee:

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Bakersfield, California;

THOMAS R. DAVIS,  
1021 Chester Ave.,  
Bakersfield, Calif.





In the District Court of the United States, Southern  
District of California, Northern Division

No. 1373—ND

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,

Plaintiff,

vs.

KEENAN PIPE & SUPPLY COMPANY, a  
California Corporation,

Defendant.

### COMPLAINT

Comes now the plaintiff and for cause of action  
alleges:

#### I.

Plaintiff is Trustee in bankruptcy of James T. Inman, bankrupt, and brings this action under Section 60(b) of the Act of Congress relating to Bankruptcy.

#### II.

On June 10, 1953, August 7, 1953, and August 8, 1953, and within four months of the filing of the petition in bankruptcy herein, defendant, was paid by the bankrupt the sums of \$3,037.39, \$5,416.63 and \$769.01, respectively, on account of an antecedent debt.

#### III.

That said transfer was as follows: Defendant caused one John Deeter, a general contractor, to make checks in the above-designed amounts, being

moneys due to the bankrupt under a construction contract, payable jointly to defendant and the bankrupt; that the bankrupt endorsed said checks and delivered them to defendant.

#### IV.

The effect of said transfer was to enable the said defendant to obtain a greater percentage of his debt than some other creditor of the same class.

#### V.

At the time of said transfer the said James T. Inman was insolvent and the defendant or his agent acting with reference thereto then had reasonable cause to believe that the said James T. Inman was insolvent.

Wherefore, plaintiff demands

- (1) That the said transfer be set aside;
- (2) That plaintiff have judgment against defendant for the sum of \$9,223.03 with interest;
- (3) That plaintiff have judgment against defendant for costs.

V. P. DI GIORGIO,

/s/ V. P. DI GIORGIO,  
Attorney for Plaintiff.

[Endorsed]: Filed July 8, 1954.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Keenan Pipe & Supply Company, a California Corporation, and in answer to plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

Answering the allegations contained in paragraph II, defendant admits that it received the respective sums therein alleged on or about the times therein alleged; denies generally and specifically each and every other allegation contained in said complaint.

II.

Answering the allegations contained in paragraph III, defendant admits that it received the sums set forth in paragraph II of said complaint at the times and in the amounts as set forth in said paragraph II and denies generally and specifically each and every other allegation contained in said paragraph III.

III.

Answering the allegations contained in paragraphs IV and V, defendant denies generally and specifically each and every allegation contained in said paragraphs.

For a Second, Separate and Further Defense, Defendant Keenan Pipe & Supply Company, a California Corporation, Alleges:

I.

That during the period of January, 1953, to and including the 17th day of October, 1953, the date of the filing of the petition in bankruptcy by said James T. Inman, herein, said James T. Inman was engaged as a subcontractor in the installation and construction of certain plumbing facilities for that job known as the "Staff Housing Utility, California Home for the Epileptic, Porterville, California," being then constructed for the State of California as the owner thereof by John W. Deeter, general contractor.

II.

That defendant during said period set forth in paragraph I of above sold and delivered to said James T. Inman, certain plumbing supplies, fixtures and equipment in the total sum of \$4,348.14 for his use, which materials were actually used in the installation and construction of said plumbing facilities as hereinabove alleged; that as of June 10, 1953, no part of said sum had been paid; and there was then due, owing and unpaid from said James T. Inman on account of said materials furnished and used in the construction of said Staff Housing Utility, California Home for the Epileptic, Porterville, California, said sum of \$4,348.14; that thereafter interest accrued on said sum during said period in accordance with the agreement in the fur-

ther sum of \$12.92, making a total of \$4,361.06 due, owing and unpaid.

### III.

That at all times prior to the receipt of said payments said defendant was entitled to file a claim with the disbursing agent for the State of California for the plumbing supplies, fixtures and equipment furnished to and used by said James T. Inman on said Staff Housing Utility, California Home for the Epileptic, Porterville, California, job, in accordance with Section 1190.1 of California Code of Civil Procedure.

### IV.

That said James T. Inman and the general contractor, John Deeter, proposed to defendant that if the latter would waive its rights to the security of said Section 1190.1 of the California Code of Civil Procedure, all payments to James T. Inman for work done under said subcontract would be issued by check naming James T. Inman and defendant as joint payees; that said defendant agreed to said proposal and waived all of his rights to file stop notices and the filing of its claim with said disbursing officer for the State of California in accordance with the provisions of said section, thereby substantially altering his position; and that said payments were made subsequent to said waiver agreement and were received in good faith as a consideration for said waiver; that the time for filing said notices and claims under said Section 1190.1 expired subsequent to the waiver agreement, the forbearance of defendant being a consideration for said payments.



For a Third, Separate and Further Defense, Defendant Keenan Pipe & Supply Company, a California Corporation, Alleges:

### I.

That during the period of August 1, 1952, to and including the 17th day of October, 1953, the date of the filing of the petition in bankruptcy of said James T. Inman, herein, said James T. Inman was engaged as a plumbing contractor in the County of Kern, State of California; that during said period defendant sold and delivered to said James T. Inman plumbing supplies, fixtures and equipment in the total sum of \$21,624.96; that during said period and until August 7, 1953, said defendant had paid or received credit for a total of \$9,642.55; that there remained owing, due and unpaid as of August 7, 1953, the sum of \$11,982.41, to which thereafter interest accrued on said sum in the further sum of \$75.25, making a total of \$12,057.66 due, owing and unpaid.

### II.

That prior to the receipt of said payments and as a part of said \$12,057.66 defendant was entitled to file materialman's lien under Section 1193.1 of the California Code of Civil Procedure to the extent of \$1,280.53 for materials sold to and used by said James T. Inman in the construction of plumbing facilities on residential jobs of said James T. Inman in the City of Bakersfield, County of Kern, State of California, described as follows: (1) 512 East 19th Street; (2) 121 El Tejon; and (3) 1821 Calvaliea,

being then constructed by said John Deeter as general contractor and said James T. Inman as a subcontractor.

### III.

That said James T. Inman and the general contractor, John Deeter, proposed to defendant that if the latter would waive its rights to the security of said Section 1193.1 of the California Code of Civil Procedure, all payments to James T. Inman for work done on the jobs set forth above would be issued by check naming James T. Inman and defendant as joint payees; that said defendant agreed to said proposal and waived all of his rights to file claims of lien in accordance with the provisions of said section, thereby substantially altering his position; and that said payments were made subsequent to said waiver agreement and were received in good faith as a consideration for said waiver; that the time for filing said claims under Section 1193.1 expired subsequent to the waiver agreement, the forbearance of defendant being a consideration for said payments.

Wherefore, defendant prays:

1. That plaintiff take nothing by his complaint;
2. That defendant have judgment for his costs.

/s/ JOHN B. PETERMANN,  
Attorney for Plaintiff.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 6, 1954.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause coming on for trial on the 16th day of May, 1955, and having been tried before the Court, a jury having been waived, John B. Petermann appearing as counsel for defendant, and Thomas R. Davis of the firm of V. P. Di Giorgio, appearing as counsel for plaintiff, and after hearing the allegations and proofs of the parties, the arguments of counsel, and being fully advised in the premises, the following Findings of Fact and Conclusions of Law constituting the decision of the Court in said action are hereby made:

### Findings of Fact

1. That plaintiff, B. E. Shields, is trustee in the bankruptcy of James T. Inman, duly qualified and acting.

2. That within four months of the filing of the petition in bankruptcy of said James T. Inman, James T. Inman paid, or there was paid on his account from funds belonging to him, to defendant the sum of \$6,185.64 in two payments of \$5,416.63 and \$769.01.

3. That defendant was a creditor of the said James T. Inman.

4. That the payment of the aforesaid sums was on account of an antecedent debt owed by said James T. Inman to defendant.



5. That payment of said sum resulted in a depletion of the estate of said James T. Inman.

6. That at the time of the payment of each of the sums totaling \$6,185.64, the said James T. Inman was insolvent.

7. That at the time of said payments defendant had reasonable cause to believe that said James T. Inman was insolvent.

8. That as a result of the payments aforesaid, defendant was enabled to obtain a greater percentage of his debt than some other creditor of the same class.

From the foregoing facts, the Court concludes:

#### Conclusions of Law

1. The subject transfer of \$6,185.64 constitutes a voidable preference under Section 60 of the Act Relating to Bankruptcy.

2. The plaintiff should have judgment for \$6,-185.64 plus interest from the 12th day of April, 1954, being \$541.24, and costs of suit herein.

Let judgment be entered accordingly.

Dated this 11 day of July, 1955.

/s/ GILBERT H. JERTBERG,  
Judge of the District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 11, 1955.

In the District Court of the United States, Southern  
District of California, Northern Division  
No. 1373—ND

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,  
Plaintiff,

vs.

KEENAN PIPE & SUPPLY COMPANY, a  
California Corporation,  
Defendant.

### JUDGMENT

The above-entitled cause came on regularly for trial on the 16th day of May, 1955, in the above-entitled Court, before the Honorable Gilbert H. Jertberg, judge presiding, sitting without a jury, a Jury having been expressly waived; Thomas R. Davis of V. P. Di Giorgio appearing as attorney for plaintiff, and John B. Petermann appearing as attorney for defendant, and evidence, both oral and documentary, having been introduced and the Court having heretofore made and caused to be filed its written findings of fact and conclusions of law;

It Is Ordered, Adjudged and Decreed that plaintiff have and recover from the defendant the sum of \$6,185.64 plus interest in the sum of \$541.24, and costs of suit herein, \$68.30.

Dated: July 11, 1955.

/s/ GILBERT H. JERTBERG,  
Judge of the District Court.

[Endorsed]: Filed July 11, 1955.

Docketed and entered July 12, 1955.

In the District Court of the United States, Southern  
District of California, Northern Division

No. 1373—ND

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,

Plaintiff,

vs.

KEENAN PIPE AND SUPPLY COMPANY, a  
California Corporation,

Defendant.

NOTICE OF APPEAL TO THE CIRCUIT  
COURT OF THE NINTH CIRCUIT

To the Clerk of the Above-Entitled Court:

Notice Is Hereby Given That Keenan Pipe and  
Supply Company, a California corporation, above-  
named defendant, hereby appeals to the Circuit  
Court of Appeals for the Ninth Circuit from the  
final judgment entered in this action on the 11th day  
of July, 1955.

Dated this 2nd day of August, 1955.

/s/ JOHN B. PETERMANN,

Attorney for Appellant Keenan Pipe and Supply  
Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 2, 1955.

[Title of District Court and Cause.]

### REQUEST FOR CLERK'S TRANSCRIPT

To the Clerk of the Above-Entitled Court:

You Are Hereby Requested to Prepare the Clerk's Transcript in the above-entitled action and to include the following documents, to wit:

1. Complaint.
2. Answer to Complaint.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Notice of Appeal.
6. The exhibits offered by both parties and received into evidence.
7. The exhibits offered by defendant and not admitted into evidence.

You are further requested to obtain from the Court Reporter an estimate of his charges for preparing the Reporter's Transcript in this action.

Dated this 10th day of August, 1955.

/s/ JOHN B. PETERMANN,  
Attorney for Defendant and Appellant Keenan Pipe  
and Supply Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 10, 1955.

In the United States, District Court, Southern  
District of California, Northern Division  
No. 1373—ND

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,

Plaintiff,

vs.

KEENAN PIPE AND SUPPLY COMPANY, a  
California Corporation,

Defendant.

Honorable Gilbert H. Jertberg, Judge Presiding.

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Appearances of Counsel:

For the Plaintiff:

VINCENT P. DiGIORGIO, By  
THOMAS R. DAVIS.

For the Defendant:

JOHN B. PETERMANN.

Monday, May 16, 1955, 10:00 A.M.

(Other court matters.)

The Clerk: That is the only matter except the  
trial matters.

Mr. Davis: Your Honor, I wonder if it would be  
appropriate at this time to inform the Court that  
certain personal difficulties have arisen as to wit-  
nesses in this Shields vs. Keenan Pipe matter, which

make it important, if possible, that we conclude that matter today. One of the witnesses is a general contractor who stands to lose a very large sum of money if he is forced to stay over.

The Court: Well, we have two trials set for today. Now in this Keenan case both counsel are from out of town, is that right?

Mr. Davis: Yes.

(Discussion re other case.)

The Clerk: Shields vs. Keenan Pipe and Supply Company.

The Court: All right, we are ready then in the case of Shields vs. Keenan Pipe and Supply Company.

Mr. Davis: Your Honor, I might make a brief opening statement.

The Court: You are Mr. Davis?

Mr. Davis: Yes, your Honor.

The Court: And Mr. Petermann?

Mr. Petermann: Yes. [3\*]

The Court: Very well.

Mr. Davis: Your Honor, this is an action brought by a trustee in bankruptcy under section 60(b) of the Bankruptcy Act to void what the trustee alleges was an unlawful preference, or in this case a series of preferences.

Now, the complaint has alleged the payment of three sums of money in the four months' statutory period. I wish to inform the Court and stipulate at this time that the trustee has been persuaded that the

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.



first payment of \$3,037.39 was outside the four months' period. It is a very interesting point of law on which the trustee could not sustain his position. The check, for the Court's information, was certified without the four months' period but was deposited within it. There seems to be sufficient authority that the certification act is a sufficient assignment or perfection to put it without the purview of the Act.

The Court: Well, it seems to me when a bank certifies that it has X dollars which it will pay to somebody else that that is an obligation of the bank.

Mr. Petermann: Your Honor, in that connection I think it was actually delivered beyond the four months' period as well, so there could be no question.

Mr. Davis: That is correct, and the trustee is also so persuaded.

The Court: Yes. [4]

Mr. Davis: Now, as to the payment of \$5,416.63.

The Court: Five thousand four——

Mr. Davis: \$5,416.63, and \$769.01, the payment of these amounts is admitted in the answer, and it is admitted that, in paragraph III of the answer, these payments were made on or about the date specified.

Counsel has informed me also that he is willing to stipulate that the date of the filing of the petition in bankruptcy was October 17, 1953, so there then remains, your Honor, these issues on which the plaintiff will present evidence: Were the payments made at a time when the bankrupt was insolvent, and did the defendant have reasonable cause to believe that

the bankrupt was then insolvent? And in addition to that, certain special defenses which have been raised affirmatively in the answer.

With that, unless the Court has some other questions, I think we can proceed with the evidence.

The Court: Mr. Petermann, do you wish to supplement the statement?

Mr. Petermann: Just in one connection, with reference to the burden of proof of the trustee, I think there is one other issue, and that is this party received a disproportionate share than other members of the same kind, were received by this trustee.

Mr. Davis: He must have received a greater amount of [5] money than others in the same class. I didn't raise that issue because when you are dealing with general unsecured claims and there is less than one hundred per cent dividend to be paid it is automatic. I will sustain that burden of proof by testifying myself, if counsel wishes.

Mr. Petermann: I don't believe, counsel, that that alone is sufficient proof. At least the cases suggest the filing of a petition of bankruptcy and insolvency at the time of the filing is not proof that there was any insolvency in the prior four months' period. I think that is one of the issues.

Mr. Davis: Oh, yes, you are correct, counsel. He must have been insolvent at the time that the payments were made, but what I was saying was that the other element, the additional element which you correctly raised, that is that defendant must have received a greater amount of money than some other



creditor in his class is a burden which you correctly point out is also on me. I merely suggest to you that result is automatic wherever the claim is an unsecured and non-prior one and where there is less than one hundred per cent in dividends to be paid.

Mr. Petermann: Well, I think the burden of proof requires that if the man was insolvent at that particular time that it must further be shown that by that payment at that particular time this man received more than his proportionate share of his claim. [6]

Mr. Davis: I am afraid we will have to submit briefs on that, counsel.

The Court: All right, Mr. Davis, will you call your first witness?

Mr. Davis: Mr. Inman, please.

### JAMES THOMAS INMAN

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: James Thomas Inman.

The Clerk: Have that seat there.

### Direct Examination

By Mr. Davis:

Q. Will you state your full name, please?

A. James Thomas Inman.

Q. And did you file a petition in bankruptcy in this court?      A. I did.

(Testimony of James Thomas Inman.)

Q. On or about October 17, 1953?

A. That is correct.

Q. Where do you live, Mr. Inman?

A. At the present time, 3131 South H Street, Bakersfield, California.

Q. And what is your occupation now?

A. Plumber. [7]

Q. What was your occupation in 1953?

A. Master plumber.

Q. Does that encompass subcontracting?

A. That is right.

Q. I see. Mr. Inman, inviting your attention to the general period of 1953, did you have occasion to have any business relations with the Keenan Pipe and Supply Company? A. Yes.

Q. Would you tell the Court what that business relation was?

A. Well, under the past circumstances of doing business with Keenan Pipe and Supply there was one period there that I was on a cash basis with them strictly.

Q. Well, Mr. Inman, you have jumped ahead of me a little. Would you tell the Court whether you had—what your general business relations were with Keenan Pipe and Supply?

The Court: You might start in with when the relationship first occurred.

Mr. Davis: I invited his attention to the general period of 1953.

Q. Did you make any contractual arrangements with Keenan Pipe and Supply in 1953?

(Testimony of James Thomas Inman.)

A. To supply the material on the particular job.

Q. When did you make that contract? [8]

A. In '53, I believe.

Q. Can you tell the Court more closely when it was than just 1953? What part of 1953?

A. It would be in the first part.

Q. Early in 1953. What was that contract?

A. They were to supply me material on subcontracting housing and commercial work.

Q. Was there a specific job involved?

A. Yes.

Q. What was that job?

A. Well, Porterville State Mental Institution, one portion of it, the housing.

Q. And what was your relationship to that job?

A. Subcontractor.

Q. Subcontracting what?

A. The plumbing.

Q. I see. In the course of the performance under that contract, Mr. Inman, did you incur an indebtedness to the Keenan Pipe and Supply Company?

A. Yes.

Q. And will you tell the Court the total amount of that indebtedness, if you know?

A. Well, between \$11,000 and \$12,000.

Q. That was on an open account?

A. That's right. [9]

Q. Now, Mr. Inman, did you make certain payments on that open account during 1953?

A. Yes.

(Testimony of James Thomas Inman.)

Q. And would you tell the Court, as best you remember, what those payments were and when you made them?

Mr. Petermann: I submit, counsel, if we have his books on that I think they would probably reflect those payments.

Mr. Davis: We don't have any business records which would reflect that. This is purely foundational since the making of the payments has been admitted in the answer.

The Court: I think that's true. If you have an objection I will overrule it, but I didn't quite understand it as an objection, it was a suggestion.

Mr. Petermann: It was a suggestion.

The Court: Very well, proceed.

The Witness: From the time we entered into the contract on that particular job at that time, or any job, I don't remember or recall all of the payments that were made to Keenan Pipe and Supply, other than the latter part of the year.

Q. (By Mr. Davis): Would you tell the Court the payments in the latter part of the year that you remember?

A. There was one payment of \$3,000; there was another payment of \$3,039 and some odd cents, and a payment of \$5,416, and a payment of \$793, I believe; I don't recall. [10]

Q. Could it have been \$769?

A. Yes. I beg your pardon.

Q. Do you recall in your own mind the approxi-

(Testimony of James Thomas Inman.)

mate times that the latter two payments were made, the \$5,416 and \$769?

A. The \$5,416 payment was issued by the general contractor on the job July 7th, and the check was post-dated to August 7th, and the \$763 check was issued about three weeks later.

The Court: That would be towards the end of July?

The Witness: Approximately the first of August.

The Court: Was that second check post-dated?

The Witness: No.

Q. (By Mr. Davis): Then inviting your attention to the time of the making of the payment of \$5,416.63, I ask you whether taking all of your assets at a fair market value they would at that time have exceeded the amount of your indebtedness to your creditors?

Mr. Petermann: To which I object, your Honor.

This is one of the issues which the Court must decide and therefore it is invading the province of the Court, and calls for a conclusion of this witness.

Mr. Davis: Your Honor, it is arithmetical; the witness might be incorrect but if he can make the two figures, as \$10,000 or \$5,000, it is a matter—— [11]

The Court: Well, I don't think your question asked him to make the two figures. I think the question was whether or not in his opinion he was practically insolvent at the time. I think that perhaps he should state his views as to the fair market value of



(Testimony of James Thomas Inman.)

his assets and state what his indebtedness was, rather than making a conclusion.

Mr. Davis: Very well, your Honor.

Q. Mr. Inman, inviting your attention again to the time when the payment of \$5,416 was made, do you remember at this time what your assets were at that time? A. Approximately \$15,000.

Q. And does that include a house?

A. No, that was the indebtedness that I owed——

Q. No.

A. ——material bills and personal bills.

Q. I see. I will get to that in a moment. My question, Mr. Inman, at this point is directed at your assets, that is, those things which you owned or had an interest in which were of value. Now, could you tell the Court, taking all of the things of value, either real or personal property, and giving them their fair market value, your estimation what they would total? A. Approximately \$30,000.

Q. \$30,000? And would you tell the Court what those assets consisted of? [12]

A. Approximately \$15,000 in material bills.

Q. Mr. Inman, I don't think you comprehended my question, unless those bills were owed to you. You owed the bills, didn't you? A. Yes.

Q. I see. I don't mean to interrupt my witness, but——

The Court: Oh, no, the witness misunderstood the question.

Q. (By Mr. Davis): Mr. Inman, my present question is directed at this: Do you remember all of

(Testimony of James Thomas Inman.)

the things of value, whether they are real or personal property, that you owned at the time of the making of this payment of \$5,416?

A. I think so.

Q. And generally what did they consist of?

A. They consisted of a home and three automobiles.

Q. Very well. Now, Mr. Inman, taking the home and automobiles——

The Court: Pardon me. I didn't know from the inflection of the witness whether he had completed the answer to the question or not.

Mr. Davis: Oh, I am sorry.

The Court: You stated you owned a home and three automobiles at the time of making this \$5,000 odd dollar payment. Now, is that all you owned, your home and three automobiles? [13]

The Witness: Yes, other than the material I had stocked and the store.

Q. (By Mr. Davis): What value would you give to that material, Mr. Inman?

A. At current—at the prices that it was worth then approximately \$3,000.

Q. I see. Well, then, taking in your estimation, giving a fair market value to the automobile, your interest in the automobiles and the home and the material, would you tell the Court what in your estimation was their total value? Just a moment. I will withdraw that question.

Mr. Inman, were there any encumbrances against your home?

A. Yes.

(Testimony of James Thomas Inman.)

Q. And what was the total encumbrance against your home?      A. \$11,000.

Q. In your estimation what is the fair market value, or what was the fair market value of the home at the time of the \$5,000 payment?

A. \$15,000.

Q. I see. Were there any encumbrances against the motor vehicles?      A. No.

Q. You owned them clear?      A. Yes.

Q. Very well. Then, I ask you this, Mr. Inman, taking [14] your equity in your home, and the three motor vehicles, and the materials on hand, and any other real or personal property that you may have owned, can you tell the Court what your estimation is of its then fair market value?

A. I wouldn't have anything left.

Mr. Peterman: I am sorry, I didn't hear that.

The Court: He said he wouldn't have anything left. That answer of course, is not responsive.

Mr. Davis: It may be stricken, your Honor.

The Court: Yes.

Q. (By Mr. Davis): Mr. Inman, we will discuss the matter of your debts in just a moment. My questions now are directed at your assets, those things which were of possible value. Now, taking this equity in your home, and the three motor vehicles that you have told the Court you owned, and the stock on hand at your place of business, would you tell the Court what the total value of all that was, in your own estimation?

A. Approximately \$9,000.

Q. And at the same time, Mr. Inman, could you



(Testimony of James Thomas Inman.)

tell the Court what your total indebtedness to all your unsecured creditors was?

A. I don't offhand recall the total amount of the indebtedness.

Q. Can you give a reasonable approximation of that [15] figure?

Mr. Petermann: I am going to object again, your Honor. I believe the approximately and his best recollection are not the best evidence of what those were, and they are conclusions of the witness and are therefore objectionable, I think we should have a more accurate and definite statement of what those liabilities were.

Mr. Davis: Your Honor, I think the objection goes to the weight and not to the question itself. The business records of the bankrupt unfortunately are not in sufficiently good shape to present the evidence, and I think he can always testify to what his recollection was.

Mr. Petermann: I wish to make the further objection that this is not the best evidence of those liabilities.

The Court: Well, I think after a foundation is laid there are books and records, a summary might be given.

Mr. Davis: There are no books and records available, your Honor. I think I will be able to corroborate this by the testimony of the bankrupt's wife, but I thought it proper to ask him the preliminary question.

(Testimony of James Thomas Inman.)

The Court: Well, perhaps you better ask him as to the availability of the books and records.

Q. (By Mr. Davis): Mr. Inman, do you have available books and records which show the amount of your indebtedness at the time of the [16] making of this \$5,000 payment?

A. Not in my possession.

Q. Were there any such records kept?

A. Yes.

Q. And where are those records now?

A. In the hands of the trustee for this case.

Mr. Davis: Your Honor, I can only inform the Court that the trustee and I, and this is a representation to the Court, have looked through the records for a sufficiently clear picture that could be presented, and we were unable to find it. Now, I am not familiar with bookkeeping, but the trustee is fairly adept at it.

The Court: Will the trustee be here?

Mr. Davis: No, your Honor, I didn't bring him.

Mr. Peterman: I might state, your Honor, I attempted to look through them, too, and I could not ascertain anything, and for that reason I had hoped that maybe the accountant who was working on the books during the course of the business might have some records that would be available to Mr. Inman. Mr. Winters, who was listed as an accountant, and who prepared the schedules, is he available?

Mr. Davis: I made no attempt to locate him, frankly, counsel.

Your Honor, I again urge on behalf of the trustee

(Testimony of James Thomas Inman.)

that the best evidence rule has no application in our question [17] about the amount that was owed at a particular time. It may be better evidence in terms of credibility, but the best evidence rule, I think, is limited in its application as to what were the contents of some written document; if you write a letter, if the letter is available obviously it is the best evidence. But when you are asking a man about whether he owed people money the existence or non-existence of his books would only go to the credibility or weight of his testimony.

The Court: Well, it seems to me that you should develop from this witness a little more background as to his method of doing business, and what records, if any, he kept, and if he has any clear recollection as to his obligations owing at that time. I think there ought to be a little more foundation.

Mr. Davis: Very well. I see, your Honor.

Q. Mr. Inman, is your general recollection of the business transactions in the time of July and August of 1953 fairly clear today?      A. Fairly clear.

Q. Do you remember the various jobs on which you were engaged?      A. A few.

Q. And do you remember the materialmen and other business men to whom you owed money?

A. Yes. [18]

Q. Did you have any discussions with your wife which fixed that in your mind?

A. No, other than just I remember the material houses I owed money to, and who I owed money to.

Q. That is a fairly clear recollection?

(Testimony of James Thomas Inman.)

A. Yes.

Mr. Davis: Is that sufficient foundation?

The Court: I think so.

Q. (By Mr. Davis): Mr. Inman, would you then tell the Court, as of the time of the making of this \$5,400 payment, what the total amount of your liabilities was?

Mr. Petermann: Might I interrupt with the suggestion here, with reference to his recollection with reference to what he owed material houses, I think if we had an answer to his recollection as to them then we could proceed with what his other liabilities were. Your question assumes, or at least suggests there might have been others, and again we have no foundation as to anything other than material houses.

The Court: Well, it seems to me, Mr. Petermann, that you might develop those matters on cross-examination.

Mr. Petermann: Very well, your Honor.

Q. (By Mr. Davis): Is the question still clear in your mind, Mr. Inman, [19] or would you like to have it read back?      A. About \$16,000.

Q. \$16,000?

The Court: That was owing to various material-men who supplied——

The Witness: Yes.

The Court: ——you with materials?

The Witness: Yes.

Q. (By Mr. Davis): Well, now, Mr. Inman, at

(Testimony of James Thomas Inman.)

any time prior to the making of this \$5,400 payment—excuse me. Withdraw that.

You also testified that you recollected that you made a \$769 payment to the Keenan Pipe Company?

A. Yes.

Q. Was there any substantial change in your financial condition between the making of the second payment and the first? Were your debts about the same?

A. Approximately the same.

Q. And were your assets about the same?

A. Yes. Just a short period of time elapsed between the two payments.

Q. Yes. Well, now, inviting your attention to the period of a month or two preceding the making of this \$5,400 payment, did you have any conversation with any member of the Keenan Pipe Company firm, or any agent of that company, [20] regarding your financial condition?

A. Yes.

Q. State where that conversation took place.

A. In my office.

Q. And who was present?

A. Mr. Keith, Mr. Tom Keith of Keenan Pipe and Supply, and my wife.

Q. And your wife, you say?

A. Yes.

Q. And can you tell us as closely as possible how long this conversation preceded the making of the \$5,400 check?

A. Within the same month.

Q. And would you tell me, or would you tell the Court what the substance of that conversation was? What did you say and what did he say?

A. Well, Mr. Keith was on a particular job in



(Testimony of James Thomas Inman.)

town threatening the owner with possible liens, and the owner called my office, and my wife in turn called me where I was working, and we met at the office, Mr. Keith and I, in my office and he told me then there was no other course for him to do but to hire an attorney and search out all of his jobs and file liens.

Q. What did you say?

A. And I told Mr. Keith if he did that it would finish me as a subcontractor in Bakersfield. [21]

Q. Was there anything further said in the course of this conversation by any of the three people present?

A. Yes.

Q. Tell the Court in substance, as you remember, all of the things that were said at that conversation, and who said them.

A. Well, Mr. Keith said that he had to have money for the current bills that were due Keenan Pipe and Supply, and I told Mr. Keith that I did not have the money, and I was financially unable to get my hands on any money at that time to make the payments, and after a further conversation about the attorney and lien laws and various things, Mr. Keith left.

Q. I would rather you did not summarize any conversation.

A. That is all I recall.

Q. Did you have any conversation, before that conversation or after that conversation, with any member of the Keenan Pipe Company?

A. Mr. Keith would come over to the office about once a week.

(Testimony of James Thomas Inman.)

Q. During what period?

A. That was before he was talking about the attorney.

Q. Do you remember any specific conversation from those you are now discussing?

A. Yes, he asked me—— [22]

Q. Just a moment. Where did this conversation take place?      A. In my office.

Q. Who was present?      A. My wife and I.

Q. Can you tell the Court, as best you remember, when that conversation took place?

A. Not a particular date. As I said, we——

Q. Can you tell the Court with reference to the making of the \$5,400 payment when it was had?

A. About three weeks before that payment was made Mr. Keith was in the office and asked me for an account on all of my jobs, in other words, how much money I had outstanding and how much it would take to finish the jobs, and I wrote down a few jobs of what I could recollect quickly, and showed it to him and showed the amount that was on it at the present time, which was approximately \$3,200, and Mr. Keith told me that that was not sufficient to pay what I owed Keenan Pipe and Supply at that time.

Mr. Davis: I see.

The Court: May I inquire, was this conversation last testified to subsequent to the other conversation you had with Mr. Keith?

The Witness: That was before.

The Court: I beg pardon?

The Witness: That was before. [23]

(Testimony of James Thomas Inman.)

The Court: The last conversation you testified to was before the first conversation with Mr. Keith that you testified to?

The Witness: Yes. We are going backwards in the calendar.

The Court: I see. Very well.

Q. (By Mr. Davis): Are there any other conversations with Mr. Keith or with any other member of the Keenan Pipe Company organization that you remember?

A. Approximately June, the month of June, in the early part of the month of June, Keenan Pipe and Supply called my office, the material house called my office.

Q. Do you know who was calling?

A. I believe it is the young fellow known as Junior. I never knew his name. He had quite a bit to do with the ordering and merchandising of——

Q. All right. A. ——material.

Q. Who talked to him on the phone?

A. My wife.

Q. Are there any other conversations that you recall that you had with any member of the Keenan Pipe organization?

A. I don't believe that I do.

Mr. Davis: I think that is all at this time. You may cross-examine. [24]

Mr. Petermann: May I stand?

The Court: If you prefer you can come to the lectern and that may facilitate things.



(Testimony of James Thomas Inman.)

Mr. Petermann: Thank you. I could hardly see the witness, your Honor.

The Court: Yes.

Cross-Examination

By Mr. Petermann:

Q. Mr. Inman, with reference to the properties which you had on hand in the latter part of June, and July of 1953, you have mentioned a home and three autos and material in stock, and I am not certain whether I heard you correctly, did you say something about a store?

A. A store I had rented.

Q. Did you own the store? A. No.

Q. You had it rented? A. Yes, sir.

Q. And you were receiving rental from it?

A. No, sir, I owed \$700 rent on the store.

Q. The store was not rented then at all?

A. I was the rentee.

Q. Well, then you had a liability arising out of having a store rented, is that correct? You owed money by virtue of having rented that store, is that correct? [25] A. Yes.

The Court: Did you have a lease on the store?

The Witness: No, sir. The store was owned by a man in Los Angeles, and I was paying \$100 a month.

The Court: Did you have a written lease?

The Witness: No, sir.

The Court: Month to month?

(Testimony of James Thomas Inman.)

The Witness: Month to month, verbal contract.

Q. (By Mr. Petermann): What was the \$100 a month to cover? A. The rent on the store.

Q. You had no purchase contract? A. No.

Q. Now, with reference to the three automobiles, what kind of automobiles were they?

A. '40 model International ton and a half truck, and '41—'47 Packard sedan, '49 model Ford pickup.

Q. Now, what was the value of those three cars together? A. Thousand dollars.

Q. Now, at this time you had a job going at Porterville, which you have testified to, did you not?

A. Yes.

The Court: Did you answer the question?

The Witness: Yes, sir, I did.

The Court: Would you speak audibly. It is important [26] for me and it is important for the reporter.

Q. (By Mr. Petermann): And you had a written contract on that Porterville job, did you not?

A. Yes.

Q. Now, were there certain other items in addition to those covered by that contract for which you had a claim, or had done work?

A. On that contract?

Q. Yes. A. No, just the one contract.

Q. Well, now, at the Porterville job were there not certain other items for time and labor which you had a claim on?

A. That would be a change order on the same contract.

(Testimony of James Thomas Inman.)

Q. I understand. Now, what was the total amount of your claim for that labor on the change orders on that contract?

Mr. Davis: Just a moment. Your Honor, I object to it on the ground that it doesn't indicate as of when the claim obtains, at the time the contract is fully executed, or what?

The Court: Well, I understood counsel was directing the question to June or July, along about the time the payments, the first payment was made, the payment of \$5,400. Is that correct?

Mr. Petermann: That is correct, and if I may be [27] specific I will say at or about the time of the \$5,400 payment.

A. The contract was entered into approximately a year before that.

Q. At the time of the \$5,400 payment, how much did you claim was due you on the change orders?

A. There was approximately \$9,000, I believe, on the change orders.

Q. Now, you filed a claim for that amount, did you not?

A. Yes.

Q. And you kept records to support that claim?

A. I filed that claim through the general contractor for approximately \$12,000, and the check that came back from the State of California to the contractor, my portion was only \$9,000 approximately, and the State objected to certain things that I had put on the material billing.

Q. Now, when you approximated the total of your assets as of the time of this first payment, I

(Testimony of James Thomas Inman.)

believe you estimated them at the time of the \$5,400 payment to be approximately \$9,000. That did not include your claim for these change orders, did it?

A. No.

Q. Those would be in addition to that amount, would they not? A. Yes. [28]

Q. Now, at the time of the first payment, do you recall how much you owed at that time to Keenan Pipe and Supply Company on account of materials and supplies purchased from them?

A. The best that I can recall would be \$11,000.

Q. Now, did you include the sum which you owed to the Keenan Pipe and Supply Company of \$11,000 in the total indebtedness which you approximated at \$16,000? A. No.

Q. You mean that was owed in addition to the \$16,000 which you estimated before, and additional sum of \$11,000 to Keenan Pipe and Supply Company? A. Yes.

Q. Now, to whom was that \$16,000 owed?

A. That I would have to check off on my records or books to get it down perfect.

Q. Well, now, was it owed to more than one person? A. Yes, several.

Q. How many would you say?

A. Oh, I would estimate 15.

Q. And who were the principal creditors?

A. The United States Government was one of them.

Q. And how much did you owe the United States Government? A. Approximately \$5,000.

(Testimony of James Thomas Inman.)

Q. Now, who were the other persons to whom you owed [29] money?

A. I owed the Bank of America and the Anglo Bank.

Q. How much did you owe them?

A. \$1,100.

Q. And what kind of an obligation was that?

Was that a note? A. Yes, personal note.

Q. Was that secured by any property?

A. One of them was secured, and one was unsecured.

Q. What was the security under that obligation?

A. Co-signer.

Q. No property? A. No.

The Court: Do I understand you owed \$1,100 to each bank?

The Witness: No. One \$600 and one \$500.

Q. (By Mr. Petermann): Now, besides the United States Government and the two banks, who did you owe money to?

A. Bernstein Pipe and Supply.

Q. And how much? A. \$2,650.

Q. And anyone else? A. Tay Holbrook.

Q. I beg your pardon?

A. Tay Holbrook, Incorporated. [30]

Q. And how much?

A. Approximately \$1,500.

Q. Any other parties?

A. Offhand I can't recall.

Q. Of that \$16,000, aside from that owed to the



(Testimony of James Thomas Inman.)

Keenan Pipe and Supply Company, approximately \$5,000 was owed to the United States Government?

A. It was.

Q. And was that owed on account of taxes?

A. Yes.

Q. Do you recall what taxes, what type of tax it covered?

A. Withholding.

Q. From your employees?

A. Yes.

Q. Now, with reference to these two payments, the one for \$5,400 and the other one for \$769 approximately, were each of those payments made by your checks?

A. Of the last two checks, \$5,400 and \$700?

Q. Yes.

A. No.

Q. Now, were either of them made by your checks?

A. No.

Q. Now, do you know whose check was used for the \$5,400 payment?

A. The general contractor's on the job. [31]

Q. And would that be Mr. John Deeter?

A. Yes.

Q. And do you recall whether or not that was payable to you alone? Was that check paid to you alone?

A. No.

Q. Did it have someone else as a payee?

A. Yes.

Q. Were you and this other party named as co-payees, as payees together?

A. Yes.

Q. And was that other payee the Keenan Pipe and Supply Company?

A. Yes.

Q. Now, is that true likewise of the \$700 check?



(Testimony of James Thomas Inman.)

A. No.

Q. Now, do you recall who was the payee on the \$700 check?

A. I believe it was Keenan Pipe and Supply alone.

The Court: In other words, there was no co-payee on the \$700 check, according to your recollection?

The Witness: No.

Q. (By Mr. Petermann): Now, of these materials which were owed to the Keenan Pipe and Supply Company, the bulk of those materials went into jobs you were then working on, did they, [32] not? A. Yes.

Q. In other words, they were not delivered to your store for sales over the counter?

A. Some of it was.

Q. Do you know how much of these materials actually went into jobs—may I withdraw that question?

At the time of this \$5,400 payment, can you tell us what proportion of the amount then owed to the Keenan Pipe and Supply Company had gone into jobs which you were then doing?

A. No, I could not.

Q. Would you say substantially all of it had?

A. The material that I bought from Keenan Pipe and Supply was mostly of a particular brand, and it was distributed to various jobs throughout the city and county of Bakersfield. As I had men employed I would never know where the material

(Testimony of James Thomas Inman.)

went to in one particular job as it would be picked up and put on the truck and maybe carried on the truck two or three days before it got around. There were numerous items of one kind would be distributed over various jobs.

Q. Well, can you tell me what proportion of these materials actually went into jobs?

A. All of it went into jobs with the exception of small amounts sold over the counter.

Q. Do you have any idea at this time, any recollection [33] of how much was sold over the counter?

Mr. Davis: Your Honor, the trustee is prepared to stipulate for the purposes of this lawsuit it may be assumed that all of the assets went into jobs of Mr. Inman.

Mr. Petermann: Very well, I accept the stipulation.

May I take one second, your Honor?

The Court: We might take a short recess at this time. We will recess for about ten minutes.

(A short recess was taken.)

Mr. Petermann: I have just about three questions, your Honor.

The Court: Yes. Go right ahead.

Q. (By Mr. Petermann): Mr. Inman, referring back again to the time of the payment of the \$5,400 to the Keenan Pipe and Supply Company, at that time did you have the machinery and equipment which you later listed in your schedules in bankruptcy?

A. Yes.

(Testimony of James Thomas Inman.)

Q. And according to my memoranda that was valued at \$1,500. Was that in addition to the automobiles, the home, and the stock in trade that you gave me a little earlier?

A. I don't recall the \$1,500 in machinery and equipment.

Q. I read from your schedules, B-J I believe, and made some notations, in which I have listed machinery at \$1,500. Is that correct? [34]

Mr. Davis: I am looking it up, counsel. It appears to be on the summary. Just a moment and I will find it.

The Court: My notes show that the witness testified that he had materials of approximate value of \$3,000.

Mr. Petermann: Yes.

Mr. Davis: I think that is correct.

Mr. Petermann: That would have been listed. I believe, your Honor, under schedule 2-C in his bankruptcy schedules, and I was inquiring with reference to that.

The Court: Oh, yes.

Mr. Davis: 2-C lists \$2,000, and 2-J approximately \$1,500 is the figure given.

The Court: Of machinery?

Mr. Davis: Yes, your Honor, machinery, fixtures, apparatus and tools used in business.

Mr. Petermann: Mr. Davis, maybe you can give me this information as well: Does the item shown under schedule B-2-d, household goods of \$1,000, is

(Testimony of James Thomas Inman.)

that likewise included in the exempt property under schedule B-5?

Mr. Davis: Yes, it is.

Mr. Petermann: In other words, the total of the household goods and exempt property is the sum of \$1,750?

Mr. Davis: I am afraid you lost me there.

Mr. Petermann: Well, I noted that the household goods schedule under 2-D were listed as \$1,000, and the exempt [35] property listed at \$1,750.

Mr. Davis: Property claimed to be exempt by state laws \$1,000 for household furnishings. I think your notes may be in error there. You list it twice in the schedules; you list it first as an asset and then as a claim of exemption, and the same furniture is listed in both places.

Mr. Petermann: I understand.

The Court: Well, in addition to the \$1,000 household exemption were there other items totaling \$1,750 that were listed as exempt?

Mr. Davis: Oh, yes, your Honor. The 1941 panel pickup was claimed exempt, the plumbing tools of \$500, and the homestead.

Mr. Petermann: I think that answers that question.

Q. Now, you had those items of property on hand, did you, at the time of the \$5,400 payment?

A. Yes.

Q. Did you have any other items which were disposed of by you between the time of the \$5,400 payment and October 17, 1953?

(Testimony of James Thomas Inman.)

A. I had some farming equipment that was repossessed.

Q. And what was the value of that farming equipment at the time of the \$5,400 payment?

A. I believe approximately \$1,000, I would say was the value of it. [36]

Q. Now, had it been bought for \$1,000, or had you made payments on it of \$1,000?

A. I bought it, I believe I gave \$1,200 for the whole setup, for all of it; that was the new price that I paid for it.

Q. And at the time it was repossessed how much did you owe on it?

A. I believe I owed \$900 on it.

Q. Now, besides the farming equipment did you have any other property which was disposed of between the time of the \$5,400 payment and the time of filing your petition in bankruptcy?

A. No.

Mr. Petermann: I have no other questions.

The Court: I would like to ask—do you have some questions?

Mr. Davis: I have some redirect.

The Court: Go ahead. No, I will wait.

### Redirect Examination

By Mr. Davis:

Q. Mr. Inman, in the course of the recess did you have occasion to refresh your recollection on the subject of the amount of the value of the extras



(Testimony of James Thomas Inman.)

on the Porterville job due you at the time of the making of this \$5,400 payment?

A. The amount of the money that was due to me?

Q. Yes, on extras. [37] A. Yes.

Q. And do you wish then to change your testimony from what you testified to originally?

A. I would like to.

Q. And what is the corrected figure?

A. The \$5,400 and the \$763 was the total amount of money that was actually due on the change order of the Porterville project, as the balance of the money had been advanced, as payroll money on the project.

Q. How do you explain the discrepancy between your testimony now and your testimony on cross-examination?

A. The question was what was the total amount that was due me on the contract at the time we entered into the contract.

Q. Yes, and your explanation now is?

A. During the course of the contract part of the money was paid to me to carry the payroll and expenses on the project.

Q. Well, there was an offset in favor of Deeter for the money advanced for payrolls?

A. Yes.

Q. So is it a correct statement then to say that the \$5,400 which was paid by joint check to you and Keenan Pipe was the last amount of money that was due you on the Porterville job? [38]



(Testimony of James Thomas Inman.)

Mr. Petermann: For the extras?

Mr. Davis: Yes.

A. It was the total amount that was due me on the job.

Q. (By Mr. Davis): On the entire job, was there other money due you on the job in addition?

A. No.

Q. I see. Now, on cross-examination my notes indicate, and counsel can correct me if I am wrong, you estimated the value of your interest in your home at \$3,000? Am I correct in that?

The Court: According to my notes the witness indicated, I think, that his equity in his home was the difference between \$11,000 and \$15,000, or \$4,000. I don't recall anything on cross-examination on that subject.

Mr. Petermann: The Court is correct, I believe.

Q. (By Mr. Davis): Let me ask you this, Mr. Inman, if I put the question in this form, will your answer be any different than you testified on direct examination: What is your estimation of the fair market value at the time of this \$5,400 payment of your equity in your home?

Mr. Petermann: Your Honor, I am going to object now unless there has been a mistake shown, as the question has been asked and answered. [39]

Mr. Davis: It has been. I am merely giving the witness an opportunity to reanswer the question, because I don't think he understood it, your Honor.

The Court: Well, I don't know whether he did or not, but I will overrule the objection.

(Testimony of James Thomas Inman.)

Q. (By Mr. Davis): Do you understand the question?

A. The total amount or the contract price of the house we bought was \$11,300, and at the time that the house was repossessed we only had approximately \$600 in the house as equity, and at that time I figured the house would be worth \$15,000 on the open market if we could sell it. Of course, we couldn't sell it.

Q. Did you make attempts to sell the house prior to its repossession? A. Yes.

Q. And were you unsuccessful in finding a buyer for anything above the amount due on it?

A. Yes.

Q. Now, as to this \$769 check, on which you testified that Keenan Pipe was the sole payee, were there any prior transactions involving that same amount of money between you and Keenan Pipe and Mr. Deeter, the general contractor?

Mr. Petermann: During what period of time?

Mr. Davis: Immediately preceding the payment of the [40] \$769 check?

A. The preceding meeting we had we talked of the checks we had over the \$5,400 check.

Q. Was the \$769 check payable directly to Keenan Pipe the first such check issued for that amount?

A. I believe it was, the first check issued was paid to Keenan Pipe and Supply.

Mr. Davis: That is all.

(Testimony of James Thomas Inman.)

Recross-Examination

By Mr. Petermann:

Q. Mr. Inman, with reference to the house, did you build that house yourself or have it built for yourself?      A. No.

Q. Did you install any—do any of the work on the house at all yourself?      A. No.

Q. And how long did you live in the house?

A. I think we lived there approximately a year.

Q. And during that year's time did you make certain improvements in the property?

A. No.

Q. Did you install a lawn or flowers or anything of that kind?      A. No.

Q. But by virtue of your having lived in it for that [41] time you thought your house was worth \$15,000?      A. Yes.

Q. You think that was the fair market value for it?

A. According to what other houses were selling for.

Q. You do recall there were other houses, of comparable character in the neighborhood, that sold for that amount?      A. No.

Q. From your observation as a contractor in Bakersfield, though, you felt that that was a fair amount? Is that correct?

A. No, not a fair amount, but what you could get out of the house.

Q. And you thought you could get \$15,000 out of

(Testimony of James Thomas Inman.)

it?           A. We asked.

Q. And were you delinquent in your payments at the time this property was taken over?

A. Yes.

Q. And how long were you delinquent?

A. I believe three months.

Q. And was there actually a foreclosure of the property or did you turn it over to them voluntarily?

A. There wasn't a foreclosure on it.

Q. Was there some sort of proceeding on it?

A. The owner of the house just threatened to take me to court. [42]

Q. And did you give him sort of a document which prevented that?           A. No.

Q. Well, do you know what transpired?

A. No, other than he told me if I didn't turn the house over to him he was going to take me to court.

Q. And did you then turn it over to him?

A. Yes.

Q. And so far as you know he filed no action against you?           A. No.

Q. Did you receive any notification from any title companies with reference to your removal from the premises?           A. No.

Q. The only notification which you received came from the owner of the contract himself?

A. Verbally.

Mr. Petermann: I think that is all.

Mr. Davis: I have nothing further, your Honor

(Testimony of James Thomas Inman.)

The Court: You testified that the \$5,400 check, using round figures, was post-dated I think?

The Witness: Yes, sir.

The Court: Posted-dated what, approximately a month?

The Witness: Yes.

The Court: What were the circumstances surrounding the [43] post-dating of the check?

The Witness: The review of it from the contractor that Keenan Pipe and Supply was putting pressure on him and bothering him in his office for the information as to when the money was coming in, and to relieve the pressure, when Mr. Deeter found out that the money was coming through from the State of California he post-dated the check and gave it to Keenan Pipe and Supply; it was post-dated a month ahead, and dated a month ahead to relieve him of the pressure.

The Court: Now, the other check for \$700 was a check from the general contractor directly to the Keenan Pipe and Supply?

The Witness: I believe it was.

The Court: Well, do you know how it happened that the check was made payable only to the Keenan Pipe and Supply instead of to you? The money was owing to you, as I understand it?

The Witness: Yes.

The Court: Do you know how it happened that the check was made only to the Keenan Pipe and Supply?

The Witness: Well, on the \$5,400 check the



(Testimony of James Thomas Inman.)

payees were made Keenan Pipe and Supply and myself, and they wanted me to endorse the check so that they could go right to the office with it, and I refused to endorse the check, because I wanted it to go through my records in my office, and they [44] took the check back to Mr. Deeter, and Mr. Deeter issued a check to Keenan Pipe and Supply, and on the same circumstances on the second check they went to Mr. Deeter and Mr. Deeter gave a check to them. The conversation I had with Mr. Deeter about the smaller check——

The Court: Now, Mr. Deeter is the general contractor?

The Witness: Yes, sir.

The Court: Was Mr. Keith, or some representative of the Keenan Supply there when you had the conversation with Mr. Deeter?

The Witness: No.

The Court: Well, now, do I understand that there was a \$5,400 check issued and made payable to both, and you refused to endorse it, and thereafter the general contractor made a check in the same amount payable only to the Keenan Pipe and Supply?

The Witness: Yes.

The Court: Which you didn't endorse?

The Witness: That is right.

The Court: Did you give Mr. Deeter any written instructions authorizing payment of the money to Keenan Pipe and Supply?



(Testimony of James Thomas Inman.)

The Witness: No.

The Court: I believe that is all I have.

Mr. Davis: I have nothing further from this witness, your [45] Honor.

Step down.

(Witness excused.)

Call Mrs. Inman at this time.

MRS. DOLLY INMAN

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name please.

The Witness: Mrs. Dolly Inman.

The Clerk: Have that seat there.

Direct Examination

By Mr. Davis:

Q. Your full name, please?

A. Dolly Inman.

Q. Where do you live, Mrs. Inman?

A. I live at 3131 South H.

Q. Are you the wife of Mr. James Inman?

A. I am.

The Court: In Bakersfield?

The Witness: Yes.

Q. (By Mr. Davis): Mrs. Inman, in the year preceding the filing in bankruptcy by Mr. Inman, did you assist him in any way in his business affairs?

(Testimony of Mrs. Dolly Inman.)

A. Well, I took care of the office as well as I could.

Q. You took care of the records and that sort of thing? [46] A. Yes.

Q. And you were then fairly well familiar with his business affairs? A. Yes, I was.

Q. In addition to being familiar with his business affairs, were you generally acquainted with all of the property in which he had an interest?

A. Yes.

Q. Do you recall that in the weeks or months immediately preceding his filing in bankruptcy that a check was issued on the Porterville job in the approximate amount of \$5,400? Do you recall such an occasion? A. Yes.

Q. How long would you say that was before the filing in bankruptcy?

A. Oh, about two months.

Q. At the time of the issuing of that check for \$1,500—strike that.

The Court: Was counsel in error as to the amount?

Mr. Davis: I beg your pardon, your Honor?

The Court: Miss Schulke, will you read the question?

(The question read.)

Mr. Davis: Yes.

Q. At the time of the issuing of the check for \$5,416, were you conversant with all of the assets that Mr. Inman had, [47] including moneys that

(Testimony of Mrs. Dolly Inman.)

were due him on jobs?           A. Yes, I was.

Q. Could you state what those assets were?

A. Well, I can't recall, it has been quite a while.

Excluding the Porterville job.

Q. No, including everything.

A. I couldn't make a good estimate on that.

Q. No, I didn't ask you for an estimate, Mrs. Inman. I think my question was, do you recall what those assets were?

A. Oh, you mean assets?

Q. Yes.

A. I thought you meant all the jobs we had.

Q. No.

A. I am sorry. Well, we had about \$600 equity in our house, and, oh, we had our truck—we had two trucks and our car clear, and we had some stock in the plumbing shop.

Q. Stock in trade?

A. Yes, oh, \$2,500 or \$3,000 in stock, and we had our tools.

Q. What is your estimate of the fair market value, well, first of the tools?

A. Oh, I would say he had about \$1,000 or \$1,500 worth of tools.

Q. And your estimate of the fair market value of the three motor vehicles? [48]

A. Well, about \$1,000, \$1,200, something like that. I am not a very good judge of cars.

Q. Do you know what the amount, the total amount still due on the Porterville job was at that time?           A. After the \$5,400?

(Testimony of Mrs. Dolly Inman.)

Q. At the time of the making of the payment?

A. I don't believe there was any balance.

Q. You mean the \$5,400 took care of it?

A. Cleared it up.

Q. Were there any other assets which Mr. Inman had an interest in at the time of the making of this \$5,400 payment?

A. None that I know of, and I took care of the books.

Q. Yes. Mrs. Inman, inviting your attention to the week immediately preceding the making of this \$5,400 payment, did you have any conversation with any member of the Keenan Pipe organization, or any agent thereof?

A. Yes, I did.

Q. Who was that conversation with?

A. Well, I received a telephone call from their credit manager.

Q. Do you know what his name is?

A. No, I don't.

Q. He represented himself to be the credit manager to you? [49]

A. Yes.

Q. What was said in that conversation?

A. He asked what we intended to do about our bill, and I said, well, we were doing the best we could, we were waiting for the Porterville job to come in and as soon as the money came in it was theirs, and he said he was afraid that wasn't good enough, and he would prefer we not ask or not try to charge, and he was more than a little insulting over the phone.

(Testimony of Mrs. Dolly Inman.)

Q. Well, try not to characterize what he said, just say what he said.

A. He just said that wouldn't be good enough, Keenan would have to take action against us.

Q. Did he say what kind of action?

A. No, he said they would take drastic measures.

Q. About when did this conversation take place in relation to the \$5,400 payment?

A. Oh, it was about two or three weeks before we got the money.

Q. Did you have any other conversations with any member of the Keenan Pipe Company organization before or after that time?

A. Well, in July, Mr. Keith came to see me and he asked me to give him a list of our jobs.

Q. Give him a list of the jobs—— [50]

A. Of the jobs we had.

Q. ——on which you had money coming?

A. Yes, and I told him I really——

Q. Just a moment. Where did this conversation take place?      A. In my home.

Q. Who was present?      A. Just myself.

Q. I see. And what was said by both of you?

A. Well, he asked for the list of the jobs and I told him I didn't have it handy right there, and that he would have to see Mr. Inman about that, and I gave him as much of an idea as I could how soon we could pay him. I told him that we were in pretty bad shape because this Porterville job hadn't paid off as much as we had expected it to and that if he would ride along with us that we would pay



(Testimony of Mrs. Dolly Inman.)

him just as soon as we could and assign as much of the money as it came in as we could and get it paid off, and he said that wasn't soon enough, that he had to have something more to go on than that, and he said he would look up our jobs and find out where they were and——

Q. Lien them?

A. ——lien them, and I said if he did that he would turn our contractors against us and we would not be able to get any more work and we wouldn't be able to pay him, and [51] he said regardless of that that was what he would have to do.

Q. Were there any other conversations in the week immediately preceding the \$5,400 payment with any member of the Keenan Pipe organization?

A. Well, several; they came almost every week and wanted to know when we would pay.

Q. Can you recall any conversation specifically?

A. Just wanted to know when they could get a payment.

Q. No, just a moment, Mrs. Inman. Do you recall any of those conversations specifically? Does any one still remain in your mind specifically?

A. No; well, just one, when Mr. Keith came to the office when our auditor was there, and our auditor——

Q. When did this take place?

A. This took place the latter part of June, and our auditor was there, and we discussed the Porterville project and all three of us came to the con-



(Testimony of Mrs. Dolly Inman.)

clusion that it couldn't be too much before we would be able to pay.

Mr. Davis: I apologize to the Court and counsel for the poor order of proof.

Q. Going back to the question of the assets and liabilities of Mr. Inman at the time of the \$5,400 payment, at that time do you recall, as of your own recollection, what the total amount of liabilities of Mr. Inman were? A. His liabilities? [52]

Q. The amounts of debts that he owed, or unsecured debts?

A. Well, I would say about \$21,000.

Q. Let's go into that in a little more detail. How do you break that down?

A. Well, we owed about \$5,000 in government taxes, and we owed Keenan Pipe and Supply about \$11,000.

Mr. Petermann: I am sorry, I didn't hear.

Mr. Davis: About \$11,000.

A. About \$11,000 I think we owed Keenan at that time, and then we owed \$1,800 to Tay Holbrook, and then we owed about \$2,300 to Burnison; owed \$1,100 to two different banks. Is that supposed to include personal?

Q. (By Mr. Davis): Oh, yes, any debts you had, whether they arose out of the business or not.

A. We were four months delinquent in our payments on the house, which were \$85 apiece, and we also owed back taxes on our house of about \$247. That is about all I can think of right now.

Mr. Davis: I have nothing further at this time

(Testimony of Mrs. Dolly Inman.)

The Witness: I haven't looked at our books in so long I can't remember. [53]

Cross-Examination

By Mr. Petermann:

Q. Mrs. Inman, who was your auditor to whom you referred in your direct testimony?

A. Quentin Winters.

Q. And did he keep your records and accounts for a period of time? A. Yes.

Q. During what period of time?

A. Well, he came to work for us in the fall of 1952—no, just a moment. He had worked for us about a year prior to our bankruptcy.

Q. And from 1952 to the summer of 1953 had he been with you all that time?

A. Yes, he had.

Q. Did he make periodic reports for you?

A. Yes.

Q. Were those reports in writing?

A. You mean financial statements?

Q. Yes.

A. No, he never did give us a financial statement. We were quite puzzled about that, but—well, he would give us superficial ones.

Q. Were they in writing?

A. Yes. I think so.

Q. What has become of them? [54]

A. I can't recall if he gave us one or not. I know he constantly promised to give us reports.

Q. Well, what did he do for you?

A. Well, he took care of our returns and checked

(Testimony of Mrs. Dolly Inman.)

my records and balanced them, and kept a general ledger.

Q. Now, you say he kept your general ledger?

A. Yes.

Q. And is that the ledger in which you kept records of payments of account? A. Yes.

Q. And you are testifying this morning from your recollection what those ledger entries contain?

A. To the best of my ability, I am.

Q. Did you keep any of those general ledgers yourself?

A. No, all I did was keep records and he would enter them for me.

Q. Well, do you have any memory with reference to these amounts other than what you saw in the general ledger?

A. I didn't quite understand that.

Q. Do you have any memory with reference to these items other than what you saw in the general ledger amounts?

A. No, I don't. I went completely by his figures.

Q. And when you testified with reference to the Keenan account being the sum of approximately \$11,000, is that because of your remembrance of that amount in the ledger? [55]

A. Yes. I don't remember exactly what the amount was.

Q. And as of what time did that \$11,000 amount appear for Keenan Pipe and Supply?

A. Well, let me see. It was before the \$5,400 was paid.

(Testimony of Mrs. Dolly Inman.)

Q. Now, with reference to the \$5,000 due in taxes, was that due at the time the \$5,400 payment was made, or was that the amount due at the time of filing in bankruptcy?

A. No, it was due at the time of the \$5,400.

Q. And what recalls that amount to you?

A. Well, mainly the amount given on the tax record that I have.

Q. Do you have a tax record with you?

A. No. That I had in the office. I know it was around \$5,000 we owed in taxes.

Q. Did you make your payment on the taxes after receiving the \$5,400 check and filing in bankruptcy, Mr. Inman filing in bankruptcy?

A. No, sir.

Q. Did you do any business between the time that the \$5,400 check was made and the time of filing in bankruptcy as a plumbing contractor?

A. Only in regard to finishing what work we had already started. We took on—I don't understand the question.

Q. Was your husband doing plumbing work between the time that the \$5,400 payment was made and the time of filing [56] in bankruptcy?

A. Yes, he was finishing what work he had out.

Q. Did he have any employees during that period of time?

A. Yes, he had one plumber working.

Q. Now, Mrs. Inman, did you ever give any one of the Keenan Pipe and Supply Company representatives a list of jobs which were then being done?

(Testimony of Mrs. Dolly Inman.)

A. Only orally.

Q. Now, with reference to the amount which was due on the Porterville job, do you recall what the total contract price on that job was?

A. No, I don't. There were several adjustments back and forth.

Q. Do you recall whether or not there was anything due on the contract itself at the time that the \$5,400 payment was made, as distinguished from the change work?

A. I don't believe there was. I don't remember.

Q. Do you recall you and your husband preparing a claim for filing with the State with reference to those change charges?

A. I don't understand the question.

Q. Do you recall preparing a statement for Mr. Deeter, or for the State of California, or anyone else, with reference to the amount of work which was done by your plumbing company with reference to the change over at the Porterville job? [57]

A. Well, we did make up a bill and a statement of what was done.

Q. Do you remember what the total amount of that claim was?

A. No, I don't.

Q. If I suggested to you the figure of \$12,000 would that recall your memory?

A. I just don't remember; I am sorry.

Q. You were not paid for all the amount you claimed on the change orders, were you?

A. No, we weren't.



(Testimony of Mrs. Dolly Inman.)

Q. As a matter of fact, you only received a small percentage of that, did you not?

A. Yes, we did.

Q. And when I say a small percentage, only about 20 per cent of the amount which you claimed, is that correct?

A. I don't know what percentage we were paid.

Q. Would you say it was less than half?

A. I really wouldn't know. I merely just stayed in the office and my husband told me——

Q. Didn't you type up that statement for Mr. Deeter?

A. It is possible I did. Sometimes my husband typed the statements.

Q. Well, then, you don't know how much of that claim for extra work the \$5,400 check covered do you?

A. I don't know. I am sorry, I didn't understand you. [58]

Q. I say, you don't know of your own knowledge how much of your claim for the extra work on the Porterville job the \$5,400 payment represented?

A. I understood it was supposed to cover all of it.

Q. Did it cover your entire claim, or the amount which was allowed by the State?

A. I believe it was what was allowed; I am not sure.

Q. What I am trying to find out is how much was disallowed. Do you know what proportion was disallowed? A. No, I don't.



(Testimony of Mrs. Dolly Inman.)

Q. Do you recall that it was a considerable amount?

A. Well, my husband worked more closely with the accountant than with me on that job. They were trying to keep accurate records, and I just took care of the other jobs. I did what I could to help.

Q. Do you recall whether or not the \$5,400 payment represented more than—withdraw the question.

With reference to the \$700 payment, was that likewise a portion of the amount allowed on the extra work on the Porterville job?

A. I don't know. I don't think so. I don't recall.

Q. Do you know what that \$700 check purported to cover?

A. No, sir. I do not.

Q. As a matter of fact, Mrs. Inman, didn't you tell Mr. Keith that with the amount of the claim which you had [59] on the Porterville job that you were way out in front with reference to your payments?

A. We thought we had plenty coming in to pay Mr. Keith what—what we could take care of otherwise.

Q. And you told him so, did you not?

A. Well, we were sure that we would be all right on it, and—I just don't recall what my conversation was with him.

Q. But you were certain you would be all right?

A. Yes, we thought we would be all right on paying Mr. Keith. We certainly intended to pay him.

(Testimony of Mrs. Dolly Inman.)

Q. And at the time of the \$5,400 payment, there was still \$11,000 due to the Keenan Pipe and Supply?

A. After the \$5,400?

Q. Yes.

A. I don't know. Not that much.

Q. Well, was there \$11,000 due at the time, so after the payment there was only \$6,000 due? Do you recall which was correct?

A. I don't remember the figure. It is sort of vague.

Q. Well, now, when you thought you could pay them completely, did you have in mind paying \$11,000, or only \$6,000 to the Keenan Pipe and Supply Company?

A. Well, the details of it are kind of vague. I don't remember exactly what was due there on that Porterville job, but I know we felt our Porterville job would clear us with [60] Mr. Keith, of what we owed.

Q. And you felt at the time the \$5,400 check was paid to him?

A. I beg your pardon?

Q. And you had that feeling, that you had come to that conclusion at the time the \$5,400 check was paid to the Keenan Pipe?

A. I don't know what you mean.

Mr. Davis: I object to what this witness' private conclusions were.

The Court: Well, I think the objection should be overruled. I don't know whether the witness answered the question or not. Did you answer?

(Testimony of Mrs. Dolly Inman.)

The Witness: I didn't get a chance to.

(The question was read.)

The Court: The question may not be completely understandable because it refers back to the previous question.

Mr. Petermann: May I rephrase it?

The Court: Yes.

Q. (By Mr. Petermann): Mrs. Inman, you have stated you had a feeling that you would be able to take care of the account which was owed to the Keenan Pipe and Supply Company. Now, what I am inquiring about was, did you have that feeling that you could pay them completely at the time the \$5,400 payment was made? [61]

A. Yes, sir.

Q. And did that feeling or that conclusion arise from you knowing that certain sums were still due from the Porterville job?

A. No, it was just—we felt if given a little bit of time we could clear ourselves with Keenan.

Q. Did that feeling come from certain other jobs which you had under construction at that particular time?

A. I don't recall why I did make the statement.

Mr. Petermann: I have no further questions.

Mr. Davis: I have nothing.

The Court: We will recess now until 1:30 this afternoon.

(Thereupon, at 12:00 o'clock noon a recess was taken until 1:30 o'clock p.m. of the same day.) [62]

Monday, May 16, 1955, 1:30 P.M.

Mr. Davis: Your Honor, I wish to call Mr. John Deeter to the stand.

JOHN H. DEETER

called as a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: John H. Deeter.

The Clerk: Have that seat there.

Direct Examination

By Mr. Davis:

Q. You are Mr. John H. Deeter?

A. Yes, sir.

Q. Where do you live, Mr. Deeter?

A. 622 Hillcrest Drive, Bakersfield.

Q. What is your occupation?

A. General contractor.

Q. In 1953 were you also a general contractor?

A. Yes.

Q. In the year 1953, Mr. Deeter, did you have any business dealings with Mr. James Inman?

A. Yes, sir.

Q. And did you have any with particular reference to the Porterville Hospital? [63]

A. Yes, sir.

Q. What was your relationship?

A. He was the plumbing subcontractor for construction of the State housing for the hospital, and

(Testimony of John H. Deeter.)

also subsequently putting in the utilities that weren't in the general contract.

Q. I see. And what was your business? Were you the general contractor?

A. I was the general contractor on the complete job.

Q. In the course of your construction of the Porterville State Hospital, did you have occasion to have any conversation with any representative of the Keenan Pipe Company? A. Yes, sir.

Q. And with whom did you have those conversations?

A. Most of them with Mr. Keith of the Keenan Pipe.

Q. And will you tell the Court when the first of those conversations occurred, as best you remember?

A. I would say shortly after the complete job was completed, which I would say was in March or April of 1953.

Q. And where did this conversation take place?

A. First over the phone, and then he came into the office.

Q. The first conversation you ever had was on the telephone? A. Yes.

Q. What was said at that time, Mr. Deeter, between you? [64] If you can't remember the words, give me the substance of the conversation.

A. We had so many, counsel, that I can't tell you. We had so many conversations, I mean there were three or four. His first call, I mean, was in



(Testimony of John H. Deeter.)

regard to getting—when he was going to obtain payment for the material used on the Porterville Hospital, and he was inquiring when it was coming through, when we would get our money, and in turn when he would get his money.

Q. In other words, you were looking ahead to see what arrangements would be made for the payment of the Keenan Pipe, is that correct?

A. Well, he called and wanted to know. He said he had been informed by the subcontractor, Mr. Inman, that he was going to get his money from that job, and Mr. Keith was verifying if he did have money on the job and when it was coming.

Q. State whether or not there was not an earlier conversation in which the question of the method of payment was discussed.

A. Not with me, no. In other words, there was no arrangement directly with me on it.

Q. Well——

A. The only thing, very early in the stage of the contract, it was agreed, but that was an agreement between [65] Jim Inman and myself, that the checks would be made jointly to Tom Keenan, and that was between Jim Inman and myself.

Q. So the first conversation which you now relate which took place, you think—I am sorry, my recollection fails me here.

A. I would say in March or April.

Q. March or April of 1953, was concerned with when the money would be forthcoming to pay the Keenan Pipe bill, is that correct? A. Yes.



(Testimony of John H. Deeter.)

Q. And what did you reply?

A. Actually, we had already disbursed the money for the material on the main contract; this was involving money for material that went on the change order on the state utilities.

Q. I see. And was that all that was said in the course of that conversation on the telephone?

A. Yes. Then it dragged out; we went into negotiations with the State on it, and it dragged out for quite a while, because they don't act very rapidly on change orders, and there was some disagreement as to the amount of the change orders, and we necessarily had to wait for the complete amount because they don't make progress payments on change orders; they do not pay until the complete amount is agreed upon, and that took quite a bit of time. [66]

Q. During that time did you have a further conversation with Mr. Keith, or any other representative of Keenan Pipe?

A. Just before we got a final settlement Mr. Keith came into the office.

Q. Was anybody else present?

A. At this conversation I don't think so. The credit manager might have been there, but I don't recall.

Q. When you say just before the final settlement, to what settlement do you refer?

A. I referred to the \$5,400 check.

Q. I see. What took place at this conversation—

(Testimony of John H. Deeter.)

withdraw that. What was said in the course of this conversation?

A. The actual words I don't remember, but I can say the substance of it was that Mr. Keith wanted to know how much money I still owed Mr. Inman. I told him roughly \$5,400. He said he was under the impression he was supposed to get closer to \$11,000 on the Porterville job. I told him no, that I had advanced enough money to make the payroll all along to Mr. Inman, under the terms of the original contract or agreement with him. I had to make all the payrolls because he didn't have the money at that time to pay the payroll, and they told me there was \$13,000 still due on the contract, and I said that couldn't possibly be because there wasn't \$13,000 that went on that particular job, [67] so he said he would go back and check out the records, and he came back and acknowledged the fact that \$5,400 would cover all the material that went on this job.

Q. On that particular job?

A. On the particular job, and agreed at the time if I would make a joint check out that there would be no lien filed.

Q. Had there been a conversation about a lien?

A. Never actually threatened, but it was implied. I mean, I got the idea we would have to—this bill would have to be paid or the job would be liened, because the job could have been liened. They couldn't file the notice until the change order had been completed and the job had been done three

(Testimony of John H. Deeter.)

months, you couldn't file notice of completion until the change order was completed.

Q. Well, at the time of this conversation was the word "lien" used?

A. I am not sure whether the actual word "lien" was used. In order not to have the job liened it was agreed I would pay this \$5,400.

Mr. Davis: I have no further questions.

### Cross-Examination

By Mr. Petermann:

Q. Mr. Deeter, with reference to this \$5,400, do you now recall whether or not that was made by check to Mr. [68] Inman and to Keenan jointly, or whether it was made by check to Keenan alone?

A. My recollection is it was a joint check.

Q. Do you have any recollection with reference to the \$700 check, which was made at a subsequent time, as to whether or not that was paid to Keenan and Inman jointly, or to Keenan alone?

A. My recollection is that went to Keenan alone, but I could be wrong. I can obtain the documents, if necessary.

Q. You do have those documents?

A. I have those documents, yes.

Q. Do you have them with you?

A. No, sir.

Q. They are in Bakersfield?

A. In Bakersfield.

Mr. Petermann: I believe it is very material

(Testimony of John H. Deeter.)

that we should know that particular fact, your Honor.

Mr. Davis: What fact?

Mr. Petermann: And I believe we could ascertain whether they were made directly to Keenan, or jointly, with reference to the \$5,400 payment, and likewise the \$700 payment.

Mr. Davis: Well, what is your position? Maybe I agree.

Mr. Petermann: Well, I think if the payments were made directly to Keenan Pipe and Supply Company, then there is a serious question whether or not there could have been [69] a preferential payment, if the other factors are established.

Mr. Davis: I don't believe I have the checks, but the testimony was to the effect that the first one was joint and the second was made out to Keenan alone.

Mr. Petermann: Well, there was some conflict, my notes indicate, as between the testimony of Mrs. Inman and Mr. Inman. Mr. Inman, my notes show, testified the first check was made out directly to Keenan, and Mrs. Inman said the second check was made directly to Keenan. So I think we should ascertain, if it is possible, which of those situations is correct.

Mr. Davis: Well, now, these are Mr. Deeter's checks, aren't they?

The Court: Well, I understood Mr. Inman to say that the first check of \$5,400 made out some time in July, or delivered in July and post-dated

(Testimony of John H. Deeter.)

to August, was a joint check, and then he testified that the defendant Keenan Pipe and Supply Company wanted him to endorse the check but he refused to do so, and later Mr. Deeter issued a check in the same amount directed to Keenan Pipe and Supply.

Mr. Davis: Was that the \$5,400 check?

The Court: That is my understanding of his testimony.

Mr. Petermann: I now find with reference to the Court's inquiry that is what was developed, but with reference to my notes I had found it prior. I appreciate that, your Honor. [70]

Mr. Davis: That is correct, your Honor. That states the facts as Mr. Inman intended them to be stated.

The Court: Mr. Deeter, those cancelled checks that you issued are in your possession?

The Witness: They could be found.

The Court: They could be found.

Mr. Davis: Your Honor, I wish to point out, if the Court please, until there is some evidence here before the Court that there was an express or implied contract between Keenan Pipe and the general contractor, it would be somewhat unusual when there was a subcontractor in the picture, there is no materiality to the point.

The Court: Well, it seems to me that in view of the absence of records of any kind on the part of the bankrupt, and the amount of approximations that have been made in this case, both with respect



(Testimony of John H. Deeter.)

to dates and payments and what not, that the cancelled checks may be of some assistance at least in determining the exact dates upon which some of these things happened, and I am inclined to feel that if these documents are available that if counsel wants them they should be made available.

Mr. Davis: Very well, your Honor.

How could we arrange that, Mr. Petermann, so that they could be sent to the Court without the necessity of another appearance, if we can? [71]

Mr. Petermann: I will go farther than that. When you reach Bakersfield and have an opportunity to ascertain that fact from Mr. Deeter, I will accept your statement with reference to the facts.

Mr. Davis: And the checks?

Mr. Petermann: My impression at this point is that your statement is completely correct, the \$5,400 check and the \$769 check, as finally cashed were both made out to Keenan Pipe alone, if that will assist the Court. Mr. Inman now verifies that fact, and I don't know if there is any issue of fact remaining now.

The Court: Do you recall, Mr. Deeter, of an earlier check being issued in the amount of \$5,400 paid jointly?

The Witness: To be honest with you, I don't think I issued it. I don't think I would have issued it. The small check I might have, but I don't think the large check I would have issued.

The Court: So your distinct impression is that



(Testimony of John H. Deeter.)

the \$5,400 check was actually cashed as a joint check?

The Witness: That's right.

Mr. Davis: Well, maybe we better find out.

The Court: I think it would at least clear up this matter, and I am perfectly willing—do both of you gentlemen practice in Bakersfield?

Mr. Petermann: I am in Los Angeles. [72]

The Court: Oh. I was going to say that if you could send up a little written stipulation, stipulating what has been disclosed, why—I think it might be helpful for the Court if you could reproduce the face and the reverse side of the checks, giving dates and dates of cancellation and things of that sort.

Mr. Davis: I can photostat it.

The Court: You don't have to make photostatic copies.

Mr. Davis: Well, we have friends who will do the copying for us very reasonably.

The Court: Well, then, suppose that you gentlemen handle that that way, and stipulate that those matters might be received in evidence, and we will say as Plaintiff's exhibit?

Mr. Petermann: Yes, your Honor.

Mr. Davis: Yes, your Honor.

The Court: Very well.

Mr. Petermann: Just one other matter, Mr. Deeter, I was going to ask you about:

Q. You mentioned that there was some conversation with reference to not filing liens at the time

(Testimony of John H. Deeter.)

the \$5,400 check was made. Now, can you tell me what you said in respect to that conversation?

A. Exactly what I said I don't know, but I know that I was not going to release the money that I had until I was [73] assured—I knew Keenan Pipe had supplied all materials on the job, and I would not release the money until I was satisfied it was paid.

Q. And so you received some assurance that there would be no lien filed on behalf of the Keenan Pipe and Supply?

A. Definite assurance as far as I was concerned.

Q. Did you assure yourself that there would be a proper lien for this sum of \$5,400, or that there could be a proper lien for that amount?

A. I would say in the approximate amount. The figures weren't very far off; they might have varied a few dollars, but I think it was in the actual amount.

Q. Now, with reference to the \$700 check which was, according to my records, delivered subsequent to this \$5,400 check, was there some conversation which preceded the delivery of that check?

A. That was material on another job.

Q. I didn't understand.

A. That was material on another job, or two or three small jobs in town, I know at least one job in town. It had nothing to do with this original contract.

Q. In other words, that had nothing to do with the Porterville job?

A. That is correct.

(Testimony of John H. Deeter.)

Q. And were there valid claims of liens which could be [74] filed against those jobs?

A. Yes, sir.

Q. And did you have some conversation with reference to the possibility of those liens at the time you made out this \$700 check? A. Yes.

Q. And can you tell us when that was with reference to the delivery of that check?

A. I would say within two or three days prior to the delivery of the check.

Q. And that conversation was held at your office, or someone's office?

A. That possibly could have been held at my office; they were either at my office or over the phone.

Q. Do you remember who was present besides yourself? A. Just Tom Keith.

Q. Do you remember what was said by you and by him?

A. Just the general idea, Mr. Petermann; I don't remember the exact words again.

Q. Did I understand correctly that the \$5,400 was very close to the amount of the materials which remained unpaid on the Porterville job at that particular time?

A. When you say at that particular time, you mean after the job completion? We had the job completed about 90 days when this was made. [75]

Q. In other words, when this payment was made the job had been completed? A. Yes, sir.

(Testimony of John H. Deeter.)

Q. And do I understand correctly the fact to be that the payments which were now being received were not for materials but were for change orders which had been performed by Mr. Inman?

A. Portions of that payment was ten per cent retention which the State holds which was \$1,000 on the original contract, the balance of it was what he had coming on a change order.

Q. Now, do you recall whether or not the filing of his claim for those change orders was handled through your office, or did he handle that directly with the State?

A. Handled through my office.

Q. Do you recall what the amount of that original claim which was filed through your office was?

A. The original claim as turned in to the State was very close to \$13,000, somewhere between twelve eight and twelve nine.

Q. Do you remember approximately when that claim was filed with the State?

A. Roughly ten weeks before acceptance of this final—it was shuttled back and forth between Sacramento, I believe, and it took about three weeks every trip. [76]

Q. Was there an amended claim filed after the first \$13,000?

A. The first claim, there were pipes and pipe sizes and material some time that the inspector right at the job could not allocate to the job, some pipe sizes that had inadvertently got in there and

(Testimony of John H. Deeter.)

they wouldn't even let the pipe on the job, and the State rejected it and the State said send in corrected copy, and then he submitted again and they objected again, and it was reduced down from around \$13,000—I meant twelve eight. Originally it was reduced from \$13,000 to \$10,000; they reduced about \$3,000 approximately as originally submitted.

Q. Now, when this \$5,400 came down from the State, was the last payment on the claim which was filed with them? Before you answer that, first, had there been a prior payment on that claim made to your office? A. Yes, sir.

Q. And would that have been in the neighborhood of \$4,600?

A. Let me correct it. What actually happened, as I explained before, that was ten per cent retention on the first contract, which was originally around \$10,000. They held out that \$1,000. The other \$4,400 came down on this change order, and the balance of it I had advanced the balance of that money. We got it all in one lump sum, over \$9,000, [77] close to \$10,000, but of the balance of that I had advanced Mr. Inman for payroll and incidentals on the job, because he said he couldn't carry the job, and he was already on the job. He originally went on the job anticipating the \$10,000 contract, and he wound up with \$20,000, and there was no progress payment on the last and we had to carry him one way or the other. Keenan agreed to carry the material and I agreed to carry the labor.



(Testimony of John H. Deeter.)

Q. And so the difference between what Keenan received and the amount of the net claim was covered by the advances which you had made?

A. That is correct.

Q. And so those proceeds were retained by you?

A. That is correct.

Mr. Petermann: I have no further questions.

Mr. Davis: Your Honor, I have nothing further.

I am still feeling my way in matters of federal procedure, and I don't know whether this is necessary for my record or not, but purely for the record I would like to move that all testimony given by this witness pertinent to the subject of whether or not a lien was waived should be stricken, on the ground it is irrelevant, incompetent and immaterial.

The Court: Well, I think the motion will be denied.

I would like to ask a couple questions. Mr. Deeter, [78] the main subcontract of Inman to supply the plumbing and the housing part of the general hospital contract——

The Witness: That is right.

The Court: ——that was for some \$10,000?

The Witness: That is correct.

The Court: And that contract was completed, is that true, in April or May, fully completed?

The Witness: That and also the other phase was completed too. Everything was completed. We delivered the house at that time.

The Court: Well, was the installing of the utili-



(Testimony of John H. Deeter.)

ties, was that a change order in the main contract or was that a separate contract?

The Witness: It was a change order in the main contract; it was done on cost-plus. It was not a fixed fee.

The Court: Well, when you filed the claim, or the claim was filed on behalf of Mr. Inman, of the main contract, leaving out the change orders, all that that claim included was the ten per cent retention?

The Witness: Correct.

The Court: Everything else had been paid?

The Witness: That is correct.

The Court: And the amount of the change order as finally agreed upon between you and Mr. Inman and the State was agreed upon somewhere around \$9,000? [79]

The Witness: Closer to ten.

The Court: Closer to \$10,000. And then of that \$10,000 that was received Keenan Pipe and Supply received the \$5,400?

The Witness: Correct.

The Court: Which covered all of the material furnished by that company that went into the Porterville job?

The Witness: Yes, sir.

The Court: Now, was this——

The Witness: That was not all the material. They had been paid previously to that for material that went into the plumbing.

(Testimony of John H. Deeter.)

The Court: Yes. In other words, it was the balance of the material?

The Witness: Yes.

The Court: Well, now, was this check of \$5,400 issued by you before the claim had been honored and you had received a check from the State, or Inman received a check from the State?

The Witness: The check came to me. Not before it was honored, not before they had accepted the change order, not before we had all three come to the agreement as to what was being paid.

The Court: But the point is this, did you issue the check in advance of having in your hands the funds from the State?

The Witness: Correct. [80]

The Court: And do you remember how much in advance?

The Witness: No, sir. I have those records.

The Court: Well, was it maybe as much as thirty days?

The Witness: I don't think so.

The Court: Well, why did you issue the check before you had funds in your hands from the State?

The Witness: I guess, actually my memory doesn't stand me in this, I am not positive why, but the only reason I can see—and I am not sure this is why, but the only reason I can say why is because if Inman and Keenan had been pushing for their money I might have. I actually don't think I post-dated the check, but they tell me it has been proven

(Testimony of John H. Deeter.)

that I did post-date it and possibly I did, but I did not believe so.

The Court: Well, you are satisfied though that the check was issued before you received the funds from the State?

The Witness: Yes, I am satisfied.

The Court: And the only reason that you can think of now——

The Witness: I knew once that change-over was approved I knew I would get the money, but there was still a question as to the amount, until they finally approved it by all three parties.

The Court: Well, do you recall anything being said about not filing a lien if you gave the check at that time, even [81] though you didn't have the money?

The Witness: That could have been the reason I issued the check, and probably was as you bring it to mind. After they file notice of completion there is a thirty-day waiting period. They had to be protected in some manner that they would have their money, and so possibly that is the reason I issued the check. They had to be protected some way and I thought it was the simplest way to protect them, to let their lien rights expire. The date will probably bear that out.

The Court: I think I have no further questions.

Mr. Davis: With the indulgence of the Court, I have.

The Court: Yes, indeed.

(Testimony of John H. Deeter.)

Redirect Examination

By Mr. Davis:

Q. Mr. Deeter, after your original conversations with Mr. Keith on the subject of the change order and how the payments were going to be made, tell the Court whether he made further inquiry up until the time of the final payment made to him? Did he ever telephone you regarding these payments?

A. Counsel, what was your first date again?

Q. Your first conversation was when you negotiated for the work under the change order, you have told us about that. Now, would you tell us about any later personal or telephone [82] conversations that you had with Mr. Keith concerning this money that was coming on this job?

A. I think he telephoned once or twice, checking to know why it took so long, called to know when the money would be coming in.

Q. You say he called once or twice during that period to inquire? A. I would say so.

Mr. Davis: I have nothing further.

Mr. Petermann: That is all.

Mr. Davis: May this witness be excused?

The Court: Mr. Deeter, if you will arrange to make available on request of Mr. Davis and Mr. Petermann these cancelled checks involved, you are excused from further attendance.

The Witness: Thank you.

(Witness excused.)

Mr. Davis: There is one further bit of the trustee's *prima facie* case I can offer, and counsel may stipulate, regardless of what the position of solvency may have been at the time of the payments, as a matter of fact the estate will not be able to pay 100 per cent dividend. There are roughly \$3,300 on hand as of now, and it looks to me from the claim file about \$20,000 in claims to pay, so that even if we were completely successful in this action we still could [83] not pay 100 per cent dividend out of the estate. Now, I could so testify.

Mr. Petermann: I will stipulate Mr. Davis would testify in accordance with his statement.

The Court: May I inquire, when you speak of \$30,000 in claims, are you talking about unsecured claims?

Mr. Davis: Your Honor, there is a secured claim in there which I deducted, because it obviously should not have been listed in the form it was. If I said \$30,000 I was in error; I should have said about \$20,000.

The Court: In effect, that \$20,000 is in unsecured claims?

Mr. Davis: Yes. And there is no possibility, your Honor, even if this action is successful, in paying 100 per cent dividend.

Mr. Petermann: May I inquire, is any of that amount, that \$20,000 amount, represented by taxes?

Mr. Davis: Yes.

Mr. Petermann: In what amount?

Mr. Davis: It is on this sheet and I probably should have read from this summary and not from



memory anyway. Taxes due the United States \$4,590; taxes due the State thirty-nine thousand and forty-four—I am sorry, \$39.44. \$300 which are listed as being as priority under the laws of the United States, I haven't looked at the claim itself to see what they are relying on. Secured claims, it says \$22,909, [84] and unsecured claims \$11,738, but in making the representation I did, there are elements in this security instrument which obviously indicate that they were mislisted in the schedule. In any event, your Honor, even taking it at its most, we couldn't conceivably pay 100 per cent dividend, because if you subtract the taxes due the State and the \$4,500, it more than wipes out all that we now have in the estate, and if we were completely successful in this action there would be what? Some \$5,000, yes, a little over \$5,000 and the \$5,000 could not possibly pay even as they have listed in the schedule \$11,000 of unsecured creditors.

Mr. Petermann: Mr. Davis, may I inquire, according to my memorandum, the secured claims amount to \$11,909.99.

Mr. Davis: I see what happened. This was not corrected in the summary, but it was corrected in the original.

Mr. Petermann: So that the total of the claims, general creditors, only amounts to \$22,000 roughly, is that correct?

Mr. Davis: Yes. In any case, no matter how you cut it it would be impossible to pay 100 per cent dividend in any case.

The Court: Well, I think in view of the colloquy

between attorneys, and what not, we might restate the stipulation using the corrected figures, and, Mr. Petermann, you see if you can go along with the proposed statement.

Mr. Davis: Your Honor, I would rather not use the [85] schedule of the bankrupt, but I would rather rely on the personal representation, which is based on my conversations with the bankrupt, my own knowledge of the estate, because there are errors in the schedules.

My representation, and I would so testify, is this, your Honor, that even if the trustee is completely successful in this lawsuit, and recovers the total amount claimed thereunder, it would be impossible for the estate to pay a 100 per cent dividend after paying the priority claim of the United States.

The Court: Well, I think I would also prefer to have you include in the stipulation the status of the bankrupt estate with respect to the unsecured creditors.

Mr. Davis: There are \$3,300 now in the estate, and there is at least \$11,000 of unsecured creditors.

Mr. Petermann: May I make one inquiry? Your statement at this point says even if we prevailed in this particular action.

Mr. Davis: Which is not necessary to establish, but I thought I might as well bring it in to conclude the matter. I think actually, if you got down to that, I would be allowed to leave that asset out in making the representation, but just to preclude that I have it included as an asset, assume that it is an asset.

Mr. Petermann: Then I think we should inquire as to [86] what other assets there may be.

Mr. Davis: Oh. \$3,300, and this is the last remaining possible asset in the estate. There are no other recoveries to be made.

Mr. Petermann: To be determined at this particular time?

Mr. Davis: Well, yes. I can tell it to you about as positively as can be stated. If there are assets which the bankrupt has concealed, or something, it could modify that, but we have traced down all of the causes of action that are possible, and this is the last remaining possible asset today.

The Court: And you have reduced to cash all other unliquidated——

Mr. Davis: Yes, your Honor.

The Court: And also you have reduced to cash any physical assets which you had?

Mr. Davis: We have, a considerable number, your Honor, although they were heavily encumbered and brought very little cash for that reason.

Mr. Petermann: With reference to this particular testimony, I deem it to be irrelevant inasmuch as I think the issue to be determined is the amount which could have been realized proportionately by the other creditors at the time these payments were made. This may have some force and effect, but it certainly doesn't go along with the code [87] section itself, which says that it must be, in order to be a preference, more than a proportionate share, with reference to other creditors in the same class; in other words, relating to the

time of payment rather than the time of the filing in bankruptcy and the liquidation and the diminution of the assets through the bankruptcy procedure.

MR. DAVIS: Your Honor, this matter has been ably litigated, and——

The Court: I might state that my own feeling was that Mr. Petermann's objection really goes more to the weight to be given to the testimony than to the relevancy.

MR. DAVIS: If I may respectfully suggest, your Honor, if Mr. Petermann's position is correct, his objection would be well taken as a point of law, and therefore I would like to decide it on that basis.

I wish to bring to your Honor's attention, if I may, the case of *Palmer Clay Products Co. vs. Brown*, 297 United States 227, in which this issue was discussed, and as a further citation, *Collier on Bankruptcy* 60.35, in which this entire issue was dealt with at some length, and I believe that the Court will find—if the Court wishes I can read an excerpt from that Supreme Court case now, if the Court wishes to rule at this time. It seems to me to be conclusive.

The Court: Yes. Go ahead. [88]

MR. DAVIS: "The petitioner contends that a creditor who receives a part payment of his claim does not receive a preference, although he has reason to believe that the debtor is insolvent, provided the debtor's assets at the time of the payment would, if then liquidated and distributed, be sufficient to pay all the creditors of the same class an equal proportion of their claims.



“Whether a creditor has received a preference is to be determined, not by what the situation would have been if the debtor’s assets had been liquidated and distributed among his creditors at the time the alleged preferential payment was made, but by the actual effect of the payment as determined when bankruptcy results.”

And it goes on to expound on that subject, but I submit unless there is later United States Supreme Court authority that that would be conclusive.

Mr. Petermann: May I suggest to the Court, in that connection that there are several other authorities which are in conflict with the excerpt which counsel has read, and particularly the case of *Haas vs. Sachs*, in 68 Fed. (2d) 62; likewise in the case of *Peck vs. Whitmer*, 231 Fed. 893; and the case of *Mansfield Lumber vs. Sternberg*, in 38 Fed. (2d) 615. The basis and the reasoning in all of those is just [89] this, that the disproportionate amount must be determined as of the time of the payment, not as what has happened subsequent to that time, and may have resulted in a bankruptcy action having intervened and the liquidation which may have taken place by virtue of the bankruptcy proceedings.

The Court: Well, it is my recollection of the record, did we get down to a stipulation as to the matters stated by Mr. Davis, reserving on your part your objection to relevancy and materiality?

Mr. Petermann: I believe we are in accord with



reference to those particular facts, your Honor. I might restate them so I am sure I have them.

The Court: Well, I don't think the record is entirely satisfactory because of the colloquy intervening each time, and I would like to have a clear-cut statement.

Mr. Davis: Perhaps Mr. Petermann, as he suggested, would state his understanding of it and that may conclude it.

The Court: Yes.

Mr. Petermann: I will be glad to state my understanding of it, and that is that the total amount of the secured claims on file that have been listed in the bankruptcy schedules is \$11,909.99; that there were unsecured claims listed of \$11,738.21, which would make a total of \$23,648.20. That does not include the amounts which were listed as due to the United States for taxes, in the sum of \$4,590.50, nor [90] the sum which is due the State of California by virtue of taxes in the sum of \$39.44; nor does that include debts listed as having priority in the sum of \$300.

The Court: Well, do you go further with respect to the statement of Mr. Davis that the total assets of the bankrupt estate amount to \$3,300 in cash; that all unliquidated claims have been liquidated except this claim; that all of the tangible, intangible property has been disposed of?

Mr. Petermann: I am willing to stipulate to that, if that is his testimony.

Mr. Davis: Yes, that was so stated, your Honor.

The Court: All right. Well, now, Mr. Davis, do you accept the statement of Mr. Petermann?

Mr. Davis: I do, your Honor.

The Court: Well, then, those matters are covered by your stipulation, which stipulation is accepted by the Court, and they were accepted subject to Mr. Petermann's objection as to materiality and relevancy, which objections at the present time I will overrule.

Mr. Davis: Your Honor, the trustee rests.

Mr. Peterman: May it please the Court, I have just two matters which I wish to introduce, and I have a witness here for that purpose, primarily as to the amount which was due the Keenan Pipe and Supply Company at the particular [91] time these payments were made, and perhaps we can stipulate again if Mr. Keith were to testify he would say these were the amounts due. The amount which was due on August 10, 1953, was the sum of \$13,306.08.

The Court: \$13,800—

Mr. Petermann: \$13,306.08, your Honor. Parenthetically, your Honor, the payment which was received on that date therefore was credited after that time, leaving a balance of \$7,889.45.

The balance due as of September 8, 1953, prior to the application of the \$700 payment, was \$7,928.90 and after the application of the \$769.01 payment that left a balance of \$7,159.89.

Mr. Davis: I will so stipulate.

The Court: Well, the stipulation is accepted by the Court.

Mr. Petermann: That is all.

The Court: You have nothing further?

Mr. Petermann: I have nothing further.

The Court: Well, now, gentlemen, we are going to receive into evidence the checks, the cancelled checks belonging to Mr. Deeter. Now, do you gentlemen want to submit any further briefs on the matter, or argue the matter?

Mr. Petermann: At the convenience of the Court, I would [92] be willing to prepare a short brief with reference to it if it would be helpful.

The Court: Well, I am inclined to feel that it would be helpful.

Mr. Davis: Would your Honor like us in the brief to cover reargument of the facts, or merely on some specific points of law?

The Court: I think you might give your version of the facts. I don't think you need particularly to argue them. Then I think that I would appreciate having you cover the point raised by Mr. Petermann concerning the time element that is important in determining whether or not there has been a preference.

Mr. Davis: I take it that the Court would probably like to receive some law also on the subject of the effect of this purported waiver of security.

The Court: I rather gather, Mr. Petermann, you might raise that point on your brief so I think that it would be helpful if both counsel would do so.

Now, as to the time, when do you feel, Mr. Davis, you being counsel for the plaintiff, what time would you reasonably require?

Mr. Davis: I wonder if 10, 10 and 5 would be agreeable.

Mr. Petermann: It would be entirely agreeable to me if it is with the Court. I do have in mind I will be in [93] trial about five days next week, and if you should get your brief in real early I might be hard pressed for time.

The Court: Well, if you will advise the Court that you are, I don't think you will have any difficulty getting additional time.

Mr. Davis: I have a referee who is on my back with a whip lash to get this estate closed, your Honor, otherwise——

The Court: Well, let's make an order that briefs are to be submitted on the basis of 10, 10 and 5 and the matter will then stand submitted after the filing of the last brief.

Mr. Davis: Thank you, your Honor.

Mr. Petermann: Thank you, your Honor.

The Clerk: Those checks are going to be given a number when they are received?

The Court: I am not sure, do you think they will come in the form of a photostat?

Mr. Davis: Yes, your Honor, I will have them photostated, and send one copy to counsel and one copy to the Court.

The Court: Well, then the earlier dated check will be Plaintiff's Exhibit 1 and the later dated check will be Plaintiff's Exhibit No. 2, and they will be marked accordingly by the Clerk when they arrive.

(The checks referred to when received are to be marked Plaintiff's Exhibits 1 and 2, and received in evidence.)

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August 19, 1953

00-1435  
1211

James Thomson, Jr. and

85416.

44

Kalman: Hoco - S. Supp

ENCLOSURE HEREOF WITH THIS DOCUMENT IS PAYMENT IN FULL OF ACCOUNT ITEMIZED ABOVE

JOHN H. HARRIS  
OFFICE  
5416 DALS 63 CTS

# DOLLARS

**BAKERSFIELD BRANCH:**

# SECURITY-FIRST NATIONAL

# BANK OF LOS ANGELES

90.1435  
1211

**2130 CHESTER AVENUE**

**BAKERSFIELD, CALIF.**

**JOHN H. DEETER**

M. John & Reeter

James G. Thompson  
Belle woman

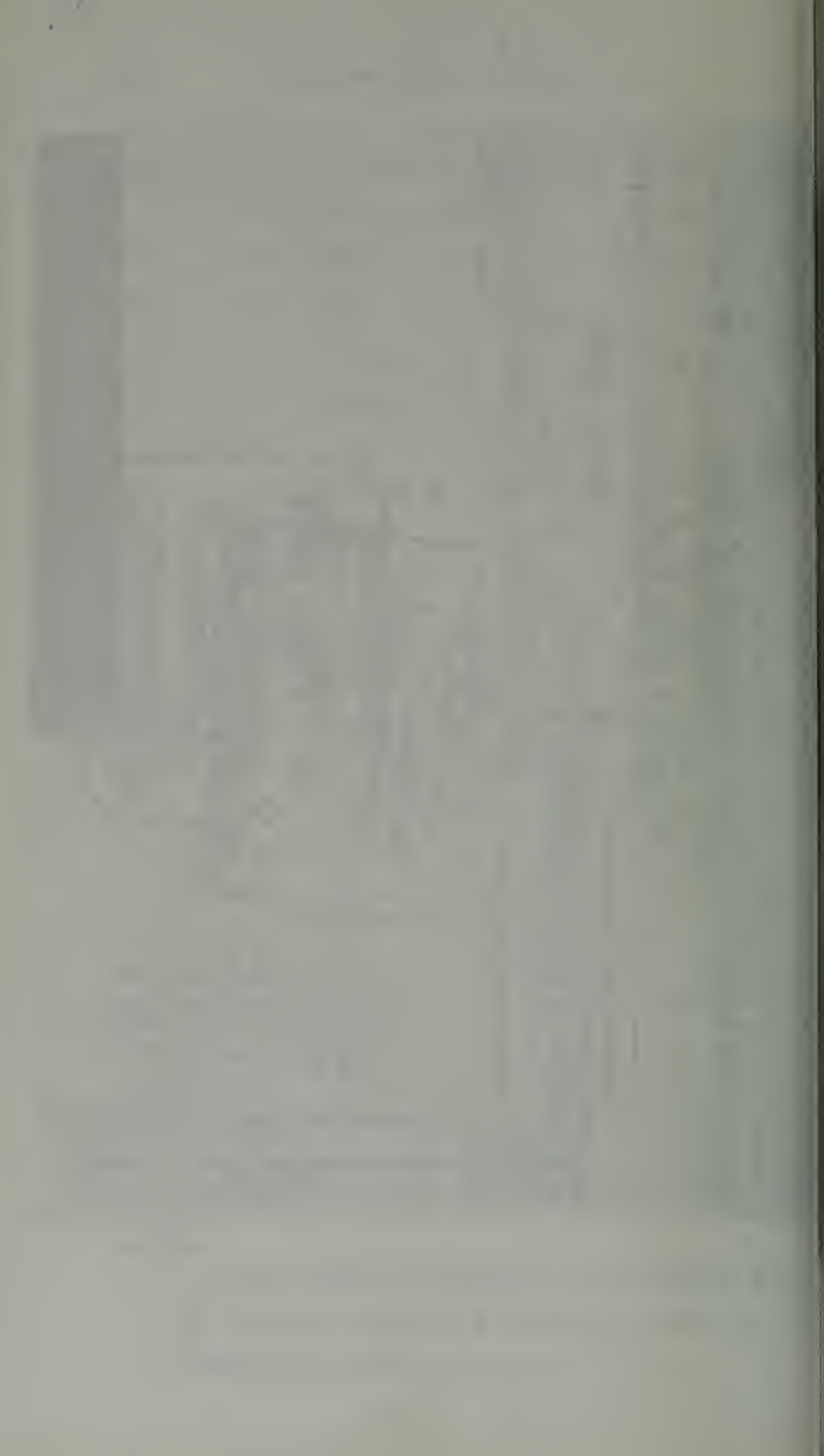
PAY TO THE ORDER OF  
 Bank of America  
 NATIONAL ASSOCIATION  
 KEENAN PIPE AND SUPPLY CO  
 372-2873

[illegible]

OR THRU LOS ANGELES CLEARING HOUSE ASSN  
ALL PRIOR ENDORSEMENTS GUARANTEED

PL. 11075 SA. IT 10. 1  
accounted in evidence 10. 1911.





H. James  
 J. P. Brown  
 Staff Secretary  
 1000 10th St. N.W.  
 Wash. D.C. 20004

PAY TO THE ORDER OF

Sept 4, 1953 90-1435  
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ENDORSEMENT METHOD BY DEPOSITOR'S SIGNATURE AND FULL NAME OF DEPOSITOR

90-1435  
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DOLLARS

BAKERSFIELD BRANCH

**SECURITY-FIRST NATIONAL**  
**BANK OF LOS ANGELES**

90-1435 2130 CHESTER AVENUE

1211

BAKERSFIELD, CALIF.

JOHN H. DEETER

*John H. Deeter*

PAY TO THE ORDER OF

BAKERSFIELD BRANCH

ALL DEPOSITS GUARANTEED

SEP 8 1953

PAY TO THE ORDER OF 419  
 Bank of America  
 NATIONAL TRUST ASSOCIATION  
 For Deposit Only  
 KEEMAN PIPE & SUPPLY CO.

PLAINTIFF'S EXHIBIT NO. 2  
 Admitted in evidence May 16, 1955.



Mr. Davis: Thank you, your Honor. [94]

### Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Fresno, California, this 15th day of October, A.D. 1955.

/s/ HELEN G. SCHULKE,  
Official Reporter.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 17, inclusive, contain the original:

Complaint.

Answer.

Findings of Fact & Conclusions of Law.

Judgment.

Notice of Appeal.

Request for Clerk's Transcript.

which, together with 1 volume of Reporter's Transcript of Proceedings and Plaintiff's Exhibits 1 & 2 constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 21st day of October, 1955.

[Seal]                      JOHN A. CHILDRESS,  
Clerk;

By /s/ CHARLES E. JONES,  
Deputy.

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[Endorsed]: No. 14913. United States Court of Appeals for the Ninth Circuit. Keenan Pipe & Supply Company, a Corporation, Appellant, vs. B. E. Shields, as Trustee in Bankruptcy of James T. Inman, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed October 24, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
Ninth Circuit

No. 14913

KEENAN PIPE AND SUPPLY COMPANY, a  
California Corporation,

Appellant,

vs.

B. E. SHIELDS, as Trustee in Bankruptcy of  
James T. Inman,

Respondent.

APPELLANT'S POINTS AND DESIGNATION  
OF RECORD

Comes now the above-named appellant, Keenan Pipe and Supply Company, a California corporation, and herewith sets forth the points on which it intends to rely on the appeal of this cause, to wit:

I.

That the subcontractor was not insolvent at the time that payments were made by the general contractor to subcontractor and materialman by joint check.

II.

That payments by general contractor to materialman did not result in diminution of the subcontractor's estate.

III.

That payment by general contractor of amount due materialman with knowledge and consent of

subcontractor during period in which materialman had a lien against contractor and subcontractor did not constitute a preference.

#### IV.

That payment by general contractor of amount due materialman with knowledge and consent of subcontractor during period in which materialman had a lien enforceable by "stop notices" against contractor and subcontractor did not constitute a preference.

#### Designation of Record to Be Printed

Appellant hereby designates and respectfully requests the Clerk of the above-entitled Court to cause to be printed the following portions of the Transcript of Record on Appeal, to wit:

1. Complaint.
2. Answer.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Notice of Appeal.
6. Request for Clerk's Transcript; and
7. Reporter's Transcript of Proceedings, together with Plaintiff's Exhibits 1 and 2.

Respectfully submitted,

/s/ JOHN B. PETERMANN,  
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 2, 1955.